LIBRARY
SUPREME COURT, U.S

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLLANTS,

vs.

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

FILED SEPTEMBER 24, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLLANTS,

vs.

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

INDEX

	Original	Print
Record from D. C. U. S., Eastern District of South Carolina	1	1
Caption (omitted in printing)	1	
Complaint	2	1
Affidavit of J. Gordon Floyd	12	10
Affidavit of William Wallace	16	13
Motion for restraining order, and application for hearing on injunction (omitted in printing)	18	
Order granting motion for restraining order and setting cause for hearing before Three-Judge Court (omitted in printing)	19	
Order continuing temporary restraining order (omitted in printing)	23	
Notice of motion (omitted in printing)	24	
Consent to continuance (omitted in printing)	25	
Additional affidavit of J. Gordon Floyd	26	15

(1309)

Record from D. C. U. S., Eastern District of South Carolina—Continued	Original	Print
Exhibit "A"—Specimen copy of 20-Payment Life Plan policy	30	18
Exhibit "B"—Specimen copy of Whole Life Plan policy	32	18
Notice of amendment to complaint	34	19
Motion to dismiss complaint	35	19
Answer to complaint	36	20
Exhibit "A"—Affidavit of Douglas C. McDougald, May 4, 1948	40	22
Exhibit "B"—Affidavit of Douglas C. McDougald, May 4, 1948	43	25
Exhibit "C"—Affidavit of Richard H. Wood	45	26
Exhibit "D"—Affidavit of Thomas F. McAfee	47	27
Exhibit "E"—Affidavit of Harold R. Sale	49	28
Exhibit "F"—Affidavit of W. T. Page	5	30
Exhibit "G"—Excerpts from hearing before Senate Banking and Insurance Committee in re "The Mortuary Bill", March 31, 1948	53	31
Exhibit "H"—Excerpts from National Selected Morticians proceedings of the 1947 Annual Meeting, September 23-26, 1947	58	35
Exhibit "I"—Affidavit of Robert Y. Wolfe	59	35
Exhibit "J"—Jacket of policy being issued by plaintiff corporation	61	37
Circular letter from Bass Funeral Home and information concerning plan	62	37
Motion to strike answer and its exhibits and for judgment on the pleadings	65	41
Affidavit of O. Charles Honig	67	43
Stipulation as to certain facts	68	44
Plaintiffs' supporting affidavits and affidavits in reply	75	47
Affidavit of John E. Blackwell	75	47
A. D. Cudd, Jr.	77	48
G. H. Goldfinch	79	49
O. Charles Honig	83	51
Additional affidavit of O. Charles Honig	94	60
Affidavit of J. Gordon Floyd	95	61
William P. Lanford	98	63
Reply affidavit of L. B. Holland	99	64
J. Gordon Floyd	101	65
Exhibits to affidavit of O. Charles Honig:		
"A"—Advertisement appearing in newspaper published in Rock Hill, S. C.	112	74
"B"—Letter signed by O. M. Orgain, February 9, 1948	113	75
"C"—Article appearing in Union Daily Times, Union, S. C., February 26, 1948	114	76

		Original	Print
Record from D. C. U. S., Eastern District of South Carolina—Continued			
Stipulation of trial proceedings, May 17, 1948		115	77
Caption and appearances		115	77
Colloquy between Court and counsel		115	77
Exhibit "P-6"—Transcript of proceedings of Senate Banking and Insurance Committee in re "The Mortuary Bill", March 31, 1948		122	82
Testimony of Douglas MacDougald		126	84
R. N. Ward		137	93
Nat Turner		143	98
J. G. Floyd		149	104
Senator Abrams		136	92
Charles Hoenig		166	117
J. A. Bass		174	125
Albert Orgy		178	128
Opinion, Wyche, J.		185	133
Appendix "A"		204	147
Appendix "B"		205	148
Findings of fact and conclusions of law		207	150
Order granting permanent injunction		226	167
Dissenting opinion, Dobie, J.		228	168
Petition for appeal		235	175
Order allowing appeal		237	175
Assignments of error		239	176
Citation	(omitted in printing)	242	
Bond on appeal	(omitted in printing)	243	
Praecipe for record	(omitted in printing)	245	
Appellees' designation of additional portions of record omitted in printing		247	
Order re original exhibit	(omitted in printing)	251	
Clerk's certificate	(omitted in printing)	252	
Designation of parts of record to be printed		253	178
Statement of points to be relied upon		253	179
Designation by appellees of additional parts of record to be printed		260	181
Order noting probable jurisdiction		264	183

[fols. 1-2] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

Civil Action No. 1918

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSEL FLOYD, and WILLIAM E. LANFORD, Plaintiffs,

v.

HON. JOHN M. DANIEL, as Attorney General of South Carolina, Hon. L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, Defendants

COMPLAINT—Filed April 19, 1948

The Plaintiffs allege:

1. That this action arises under the Constitution of the United States, Article XIV, Section 1, forbidding States to abridge the privileges of citizens or deprive any person of life, liberty, or property, without due process of law, or deny the equal protection of the laws, and under Article I, Section 10 (1), forbidding State laws impairing the obligation of contract.

2. That the Plaintiff, Family Security Life Insurance Company, is a corporation created and existing under the laws of South Carolina, as a legal reserve life insurance company, and actively and successfully engaged in business as such in Spartanburg County and other counties of this State, having its home office at Spartanburg. It has an authorized capital of $50,000.00, a subscribed capital of $25,000.00, and a paid-in capital of $16,000.00. It has 34 stockholders, all of whom, except one, either own, manage, supervise, operate, or are employed by a mortuary, or undertaking establishment. It has 79 agents, all duly licensed by the Insurance Commissioner of South Carolina, 51 of whom are funeral directors, or owners, employees, or agents or officers of mortuaries, funeral directors, or under-
[fol. 3] taking establishment. Its President and all but one of its five Directors are either owners, managers, super-

visors, or operators of mortuaries, or undertaking establishments. As of March 27, 1948, it had issued 481 policies representing insurance in force in the amount of $156,750.00. As of April 10, 1948, the number of policies issued had increased to 1,071, and the amount of insurance in force to $338,750.00, and the weekly amount of insurance written, and number of policies issued is progressively increasing at a rate of more than $125,000.00 in insurance written, and approximately 350 policies issued. Its weekly expenditures are approximately $1,250.00. In addition to the par value of stocks subscribed its stockholders paid in a surplus of $64,000.00. Its policy contracts, cash surrender values, extended insurance, and reserve for policyholders have all received the approval of the Insurance Commissioner, who has annually licensed the Company, and its agents, the Company, and its agents being currently licensed for the year ending March 31, 1949, the licenses being issued during the latter part of March, 1948. It has complied with all valid statutory and regulatory provisions promulgated for the governance of life insurance companies.

3. That the plaintiff, J. Gordon Floyd, supervises and manages the J. F. Floyd Mortuary, Inc., and owns half its capital stock, and is the President and a director of the Family Security Life Insurance Company, as well as a policyholder and an agent. The plaintiff W. Russell Floyd, owns one-half the capital stock of the J. F. Floyd Mortuary, Inc., and is a director and policyholder of the plaintiff insurance company. That the plaintiff, William E. Lanford, is a director, stockholder, policyholder, and agent of the plaintiff [fol. 4] insurance company, and is also a member of the owning partnership of Lanford-Boyter Mortuary in Woodruff, S. C.

4. That the plaintiffs, J. Gordon Floyd, and William E. Lanford, as duly licensed agents of the plaintiff insurance company, and at the same time are funeral directors, undertakers, agents, officers, or employees of mortuaries, or undertaking establishments bring this action in their own behalf as such, and in behalf of all other licensed agents of the plaintiff insurance company who are funeral directors, undertakers, or agents, officers, or employees of mortuaries, who may apply and be permitted to come in and claim the benefits of this action.

5. That the defendant, Hon. John M. Daniel, is Attorney General of South Carolina, having his official residence in the City of Columbia, in the Eastern District of South Carolina, and as such is the chief law officer of the State, and charged by law with the duty to supervise, direct, and control all legal proceedings for and in behalf of the State of South Carolina.

6. That the defendant, Hon. L. George Benjamin, is the duly appointed and qualified Insurance Commissioner of the State of South Carolina, and as such is the head of the insurance department, which is charged with the enforcement and execution of all exisfing laws or any hereafter made relating to insurance. The Commissioner is specifically charged with the power and duty to enforce all such laws, rules and regulations, with power to make rules and regulations not inconsistent with law, to institute and prosecute criminal violations of laws relative to insurance companies, or the business of insurance. He has sole power to license insurance agents, and the law imposes heavy penalties on, one, acting for an insurance company without having been duly licensed. He is required by law to examine applicants for licenses, and "before issuing such license [fol. 5] shall determine . . . that the applicant . . . is a competent and trustworthy person to engage in the classification of insurance business he intends to engage in". By issuing the licenses in March, 1948, to the 51 agents of the plaintiff insurance company, he thereby determined and declared that they were competent, and trustworthy to engage in the insurance business conducted by the plaintiff company. He has power to revoke a license "after ten days notice . . . when it shall appear that an agent has violated the laws of this State or has wilfully deceived or unjustly dealt with the citizens of this State", but not otherwise.

7. That B. B. Brockman is Sheriff of Spartanburg County, in which the Home Office of the Plaintiff insurance company is located, and he is made a party as representing the entire class of law enforcement officers who execute process to the end that he may be both bound and protected by the judicial determinations made herein.

8. This is an action of a civil nature, brought for the purpose of enjoining the enforcement or attempted enforcement

of a statute enacted by the General Assembly of South Carolina, and approved by the Governor, April —, 1948, entitled

"An Act making it unlawful for any Life Insurance Company, Its Officers, Agents, or Employees to Own, Operate or Maintain a Funeral or Undertaking Business; or Contract, or Agree with any Funeral or Undertaking Establishment to Conduct the Funeral of any Person Insured by Such Insurance Company; or for any Funeral or Undertaking Establishment, Its Agents, Officers, or Employees to be Licensed as Agent, Salesman or Solicitor for any Life Insurance Company Doing Business in This State."

and reading:

"Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, or to permit its officers, agents or employees to own, operate or maintain any such funeral or undertaking business.

[fol. 6] Sec. 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

Sec. 3. It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.

Sec. 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard labor for not exceeding six (6)

months, or both such fine and imprisonment within the discretion of the courts.

Sec. 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Sec. 6. This Act shall take effect upon its approval by the Governor."

9. That as plaintiffs are informed and believe, the plaintiff insurance company is the only insurance company in South Carolina which the law affects, and the legislation was designed and intended to cripple and destroy the plaintiff insurance company, and compel its dissolution by forbidding its stockholders to choose their officers and directors from the most competent and efficient among them.

10. That the defendant Insurance Commissioner has stated and declared his purpose and intent to attempt the enforcement of the provisions of the above quoted Act, and to revoke the agency licenses heretofore granted by him to the agents of the plaintiff insurance company, who are officers, agents, employees, or owners of any mortuary, funeral director or undertaker, notwithstanding his recent determination that they were competent and trustworthy persons to engage in the insurance business as agents for the plaintiff company, which writes a class of insurance [fol. 7] almost wholly similar to that written by numerous other companies doing business in this State, any differences being limited to the more favorable cash surrender values, extended insurance provisions, and higher insurable age limits, and better policy reserves contained in the policies issued by the plaintiff company.

11. That the above quoted Act of the South Carolina General Assembly which the insurance Commissioner has declared he will undertake to enforce is unreasonable, arbitrary, discriminatory, confiscatory, and oppressive, and is null and void because in direct conflict with Section 1 of Article XIV of the constitution of the United States forbidding any State to make or enforce any law abridging the privileges of Citizens of the United States, or to deprive any person of life, liberty or property, without due process of law, or deny to any person the equal protection of the laws, because:

(a) It denies to the plaintiff insurance company and its stockholders the right to choose their officers from ordinary considerations of business judgment, executive ability, influential position in the community, record of success, public confidence enjoyed, and other customary factors determining the choice of corporate officials, and arbitrarily disqualifies an owner, manager, supervisor, or operator of a mortuary, or undertaking establishment to hold office or be an agent of the Company; and there is no reasonable relation between the disqualifying prohibition of the statute and any evil to be remedied or any public good to be achieved by the assailed prohibition, the undertaking and mortuary business being legal businesses, respectable, lawful, necessary, and essential to the public welfare.

(b) It denies to the plaintiff insurance company the right to choose its agents on lawful and reasonable business considerations, and with a view to the business productivity which the agent chosen is thought or proven to have, and deprives it of services of agents chosen on this basis; whereas, the very agents affected by this Act have less than a month past been examined by the defendant, Insurance Commissioner and licensed by him after his determination that they are persons "competent and trustworthy to engage in business as agents of the plaintiff insurance company," and there being no discernible reasonable relationship between this arbitrary prohibition, and any suggested evil it seeks to remedy or any professed public good it promises to achieve.

(c) It denies to the plaintiff insurance company the right to own or invest in profitable, lawful, respectable, and high yielding businesses, to wit: the businesses named in the act, with no discernible or reasonable basis or relationship from which any evil is sought to be remedied or any benefit accomplished by the arbitrary provision.

[fol. 8] (d) It is arbitrary class legislation designed to single out the plaintiff insurance company, and subject it to limitations of the right of contract, enjoyed by other insurance companies doing business in this State of substantially the same character, and there is a manifest lack of reason or relationship between the factors enumerated in the statute as the basis upon which the classification is achieved, and any public evil or public good sought to be remedied or

accomplished by the classification; the terms used being designed and arranged so as to make the statute operative discriminatingly and solely upon the plaintiff insurance company, it being the only company doing business in South Carolina which meets the arbitrary and artificial description of persons to be employed, and persons to be officers or agents, or businesses to be engaged in.

(e) It is upon its face arbitrary, unreasonable, and discriminatory legislation designed to operate oppressively, destructively, and unfairly on the plaintiff insurance company alone because it expressly excepts fraternal benefit associations licensed to do business in this State, and there is no reasonable basis for such discrimination, and authorizes and suggests that such associations adopt the plan which the Act condemns only for the plaintiff corporation, it being submitted that the difference between a corporation, and an association furnishes no reasonable basis for such discrimination.

(f) The act arbitrarily catalogues employment or ownership or agency for legitimate businesses of undertaker, managing mortuaries, and directing funerals to identify and point out that plaintiff insurance company alone to suffer the injuries and penalties attempted to be inflicted by the legislation, and such characteristics as used in the Act may not reasonably support the classification since there is nothing in the Act making the employments designated appear as peculiarly requiring exclusive legislation in relation to insurance companies, insurance agents, or the insurance business.

(g) It is manifest on the face of the act assailed that there is no inherent reason in the subject matter justifying the classification made, and it singles out the plaintiff company, and its officers and agents, abrid-ing its and their privileges, and denying it and them the equal protection of the law, and takes its and their rights and property without due process of law.

(h) On its face the Act does not undertake to regulate insurance companies, insurance agents, or the insurance business, nor even profess or pretend to such an object. It is not regulation but undisguised discrimination, and if the Act should be upheld, it would authorize the Legislature

without even the pretense of a lawful or reasonable regulation to destroy the legitimate business of the plaintiff, and its right of lawful contract.

(i) It denies to owners, agents, officers, employees or operators of mortuaries, undertaking establishments, or funeral directors their lawful right of contract and to engage in lawful, and respectable employment carrying substantial compensation on no other basis than that they are connected with such businesses, and compels them to relinquish employment as agents for the plaintiff insurance company, for which they have already been adjudged competent and trustworthy, and for which they have received licenses and paid for them.

(j) In denial of due process and the equal protection of the law, the Act deprives a funeral director, undertaker, or an agent, officer, or employee of such, who is a stockholder, in an insurance company (the plaintiff insurance company) of his right to be an officer of a corporation in [fol. 9] which he is a stockholder, and there is no reasonable basis to support the prohibition.

12. The Act assailed is void because it offends Section 10, (1), of Article 1 of the Constitution of the United States forbidding the passage by a State of any law impairing the obligation of contracts, both the plaintiff insurance company and its agents who are connected with the undertaking business in any of its branches, both having current contracts which are valuable to both and which the Act penalizes and forbids, and punishes with heavy criminal penalties.

13. The Act assailed for the same reasons and on the same ground hereinabove asserted as rendering it offensive to the cited provisions of the Constitution of the United States is unconstitutional under the identical provisions of the Constitution of South Carolina as set forth in Section 5 of Article 1, and Section 8 of Article 1.

14. The Act imposes a criminal penalty of a fine not exceeding $1,000.00 or imprisonment for not exceeding six months, or both for a violation of its provisions and prescribes that each violation shall be a separate offense, and affords no opportunity to test its validity before the penal

sanctions are invoked as has already been threatened and stated to be the declared purpose of the Insurance Commissioner.

15. That if the void Act is permitted to be enforced, it will destroy the good will of the plaintiff insurance Company, injure and cripple it in its operations, deprive it and its officers and stockholders of valuable services, destroy their investments, and prevent it from selling insurance in the amount of more than $125,000.00 per week at the present rate of growth, which growth has been consistently progressive, and it will deprive the agents of the company of [fol. 10] their contracts and of their compensation, expel the plaintiff, Floyd, from his office as Director and President, and subject the Company, and its officers, Directors, and agents who are connected with an undertaking establishment of any type, to unreasonably severe and cumulative and recurrent fines, as well as imprisonment, and will subject them to a multiplicity of vexatious prosecutions under an invalid statute, which will inflict irreparable injury on the plaintiff for the prevention and redress of which wrongs, and threatened wrongs they have no adequate remedy at law, or otherwise than thought the exercise of the equitable powers of this Court.

Wherefore, Plaintiffs pray:

1. That the statute hereinabove quoted approved April —, 1948, (House Bill 1141, Senate Bill 1606), be adjudged unconstitutional, null, void, and of no effect.

2. That an interlocutory injunction be issued enjoining the defendants, and each of them, and all for whom they stand, or whom they represent, including their deputies, assistants, and all others of whom they are the official superiors, from taking any step or proceedings of any nature whatsoever to enforce the provisions of said statute against the plaintiffs, their officers, agents, or employees, or any on whose behalf they bring this action, or instituting against the plaintiffs, or any whom they represent, or on whose behalf they sue, any criminal proceedings or prosecutions with a view to invoking the provisions of said Act, and imposing the penalties therein provided on account of their failure to observe and obey the provisions and requirements, and prohibitions of the said Act by changing the

officer personnel of the plaintiff insurance company, dismissing or cancelling the contracts with its agents, or continuing to carry on the business as an insurance company, and as agents for the insurance company, and officers thereof as heretofore accustomed.

[fol. 11] 3. That the Judge of the United States District for the Western District of South Carolina do organize a special District Court of three Judges under the provisions of Title 28, Section 380, United States Code, to hear the application of the Plaintiffs for permanent and temporary injunction, and issue a rule requiring the Defendants to show cause after such notice as the Court may order why the enforcement of the provisions of the said Statute should not be enjoined.

4. That, because of the manifest irreparable injury that would be suffered by the Plaintiffs because of the enforcement or attempted enforcement of the provisions of said Statute from the facts alleged in the complaint, should they be established, this Court do issue its temporary restraining order restraining and enjoining the Defendants, meanwhile, and until the further Order of this Court from enforcing or attempting to enforce, in any manner, any of the provisions of said Act.

5. For any other relief just.

(S.) E. W. Johnson, Spartanburg, S. C.; C. E. Daniel, Spartanburg, S. C.; T. Sam Means, Jr., Spartanburg, S. C., Attorneys for the Plaintiffs.

Duly sworn to by J. Gordon Floyd. Jurat omitted in printing.

[fol. 12] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF J. GORDON FLOYD—Filed April 19, 1948

Before me a duly authorized notary public personally appeared J. Gordon Floyd who being duly sworn says that

he is President and General Manager and the owner of fifty (50) per cent of the capital stock of the J. F. Floyd Mortuary, an undertaking concern in continuous operation in the City of Spartanburg, owned by the same family, for sixty-two years.

About eight or nine years ago he began to investigate and study writing of legal reserve life insurance through funeral directors and mortuaries and after considerable investigation he and his associates in the year 1941 acquired a life insurance company chartered under the laws of South Carolina and he, as the, you might say, moving spirit in the life insurance company, and its President, was about to put the plan of writing life insurance through mortuaries into effect, when world war II began and your deponent voluntarily entered the service as private, and continued in service for approximately four years. After being discharged deponent further investigated the aforesaid method of writing life insurance and studied the plans and methods of doing business as set up in the twenty-five or thirty states in which life insurance is sold in this manner.

That deponent not only had made and continued to make investigation himself but in addition employed the services of one, O. Charles Honing, who spent some eight or nine [fol. 13] months in other states in making further study and investigation. As a result of this and being fully convinced of the public demand for insurance written in this manner, through undertakers, mortuaries and funeral directors, that it was a sound business from the standpoint of the funeral directors, undertakers and mortuaries and from the standpoint of the public, your deponent interested thirty-two other stock holders, all of whom are funeral directors, or owners, employees or agents or officers of mortuaries, funeral directors or undertaking establishments, into purchasing stock and paying surplus into his company know as Family Security Life Insurance Company.

As a result, the company has a authorised capital of $50,000.00, had a subscribed capital of $25,000.00, a paid in capital of $16,000.00 and a paid in surplus of $64,000.00.

That although the Family Security Life Insurance Company had been duly licensed with active agents and policies written since 1941 it did not begin to expand until after deponent was discharged from the army and had made and

completed the further investigations hereinabove referred to.

That after becoming active, it being the only insurance company domesticated in South Carolina engaged principally in writing life insurance through mortuaries, undertakers, and funeral directors, and there was introduced on or about February 5, 1948 in the House of Representatives of the State of South Carolina house Bill No. H. R. 1141 (later enacted into law) and in the Senate was later introduced a similar piece of legislation and hearing on these companion bills were held both in the house and in the Senate. On the Senate hearing deponent had the testimony offered by the pro-ponents and opponents taken and transcribed.

[fol. 14] One of the proponents of the Bill, an undertaker, stated, in part, at the hearings. ". . . I can see this by reason of the fact that if I don't align myself with some company, and this is allowed to continue, I will be practically out of business in a short period of time . . . I have no alternative of staying out . . . Gentlemen, it will just as visibally force me into a business that I don't care to go into when I close up . . . . there is no alternative, gentlemen. There is no way in the world. If the Bill doesn't pass, I am legislated into the insurance business."

In the face of these statements the man who made them denied that he feared the competitive advantage a mortuary writing life insurance would have over a mortuary not writing life insurance.

An attorney, representing an undertaking establishment, also spoke for the Bill. In reply to this question, "Do you believe that permitting one mortuary company to write insurance, legal reserve life insurance, gives it a competitive advantage over another mortuary to the extent that the other mortuary would also have to go into the insurance business?" That proponent replied, "I most certainly do. . . . . ."

An attorney for the Carolina Life Insurance Company, who said he also spoke for the Capital Life Insurance Company, (both writing industrial life insurance) spoke for the Bill and he stated that "Other insurance companies have stated they are in favor of the iBll's passage."

Although the proponents of the Bill spoke at length and from various approaches there was no valid reason ad-

vanced, or theory assigned, which showed that the public good or the public welfare or the public interest would be promoted by the passage of the Bill in question. The proponents of the Bill either by affirmative direct answer or by statement of facts which led to the same obvious conclusion showed their fear of the competitive advantage that a mortuary writing life insurance would have over a mortuary not writing life insurance and conversely that an insurance company writing insurance through a mortuary [fol. 15] would have a competitive advantage over an insurance company not writing insurance through a mortuary.

That in addition to the years spent your deponent has spent approximately twenty-five thousand ($25,000) dollars in promoting Family Security Life Insurance Company.

(S.) J. Gordon Floyd.

Sworn to and subscribed to before me this 17th day of April 1948.

(S.) Bruce Littlejohn. (Seal.)

[fol. 16] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF WILLIAM WALLACE—Filed April 19, 1948

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me, William Wallace, who being duly sworn, deposes and says: that he is consulting actuary for Palmetto State Life Insurance Company, Columbia, South Carolina; Family Fund Life Insurance Company, Atlanta, Georgia; Family Security Life Insurance Company, Spartanburg, South Carolina; and others; that he has, as an actuary, examined the policy contracts, the reserve basis, the mortality table, the non-forfeiture values of the policies (cash surrender and extended term insurance), the interest rate assumed, and the premium rates of Family Security Life Insurance Company, and has found that all of such are actuarially sound; that Family Security Life Insurance Company has voluntarily adopted

many of the recommendations of the Guertin Committee which carried out a general study of insurance companies in the United States for the past ten years, which Committee submitted recommendations to the National Insurance Commissioners Convention composed of the Insurance Commissioners of all the states, which recommendations were directed toward the interests of the policyholders; that among the Guertin recommendations incorporated in the contracts of the Family Security Life Insurance Company were:

[fol. 17-25] (a) The 1941 Standard Industrial mortality table, which is the most recent mortality table available and reflects recent improvements in mortality as brought about by improvements in medical science, living conditions, etc.

(b) The Commissioners' valuation method for determining policyholders' reserves and non-forfeiture values, the general effect of which method is to establish higher policyholders' reserves than the former methods generally used by industrial life insurance companies domesticated in South Carolina.

(c) An assumed interest rate within the earning capacity of the company based on current market and investment conditions.

To the best of my knowledge, information and belief, the Family Security Life Insurance Company was the first domestic industrial life insurance company in this state to issue policies incorporating the above provisions of the Guertin Committee's recommendations; that in many respects the general effect of such action on the part of the company, while regarded in the best interests of the policyholders, is to place the company at a competitive disadvantage, insofar as the other industrial life insurance companies domesticated in this state have not adopted such recommendations; that the premium rates of the Family Security Life Insurance Company are generally more favorable to the policyholders than the average rates of other industrial life insurance companies domesticated in this state; that to the best of my knowledge, information and belief, the cash surrender and extended insurance values of the Family Security Life Insurance Company are gen-

erally greater than those of other industrial life insurance companies domesticated in this state; that to the best of my knowledge, information and belief, Family Security Life Insurance Company is the only industrial life insurance company domesticated in this state which writes life policies up to the age of 74, and so far as I know, the other industrial life insurance companies domesticated in South Carolina write only up to the age of 65.

(S.) Wm. Wallace,

Sworn to before me this 15th day of April, 1948.
(S.) Thomas B. Whaley (L. S.), Notary Public for South Carolina.

[fol. 26] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ADDITIONAL AFFIDAVIT OF J. GORDON FLOYD—Filed April 29, 1948

J. Gordon Floyd, duly sworn, says:

That he is a stockholder, director and the president of the Family Security Life Insurance Company which is a South Carolina corporation created by South Carolina law as a legal reserve insurance company with its home office at Spartanburg, with an authorized capital stock of $50,000, a subscribed capital of $25,000 and paid in capital of $16,000 and paid in surplus of $64,000.

It has 34 stockholders, all of whom except one are connected with a mortuary, funeral director or an undertaking establishment as owner or part owner, manager, supervisor, operator, or employee.

That deponent owns one-half of the capital stock of the J. F. Floyd Mortuary, Inc. at Spartanburg and the plaintiff W. Russell Floyd owns the other one-half of the capital stock and this deponent is the president, general manager, and supervisor of said mortuary. He is also an agent of the Family Security Life Insurance Company.

It has 79 agents in South Carolina, all duly licensed by

the insurance commissioner. 51 of these are connected directly or indirectly with a mortuary, undertaking establishment, or funeral director as owners, stockholders, officers, part owners, managers, operators, employees, or agents. These 51 were licensed or re-licensed by the South Carolina Insurance Commissioner during the latter part [fol. 27] of March for the period commencing April 1, 1948 and ending March 31, 1949. Approximately 45 of these 51 had been previously licensed by the Insurance Commissioner for the preceding annual period or portion of same period during which they acted as agents.

As of March 27, 1948 it had 484 policies outstanding, representing $156,750 of insurance. As of April 10, 1948 the number of policies issued had increased to 1071 and the amount of insurance increased to $338,750. Prior to the adoption of the act assailed in the preceding the average weekly increase in the amount of business written was approximately $125,000.

During the week April 10 to April 17, 1948 413 additional policies were issued representing $114,750 additional insurance. During the week from April 17 to April 24, 1948 392 policies were issued representing additional insurance enforced in the sum of $110,250. The company's weekly expenditures average approximately $1250.

That the agents were selected with great care and with the view to their capacity to produce business as inferred from their standing in the community and wide acquaintanceship and the influence and public confidence enjoyed and the phenominal growth of the company has justified the selection and the basis of selection.

Deponent asked his attorney, Mr. E. W. Johnson to see if the law couldn't be tested before any prosecution was started or agent licenses revoked and asked him to talk with the insurance commissioner and find out; that his attorney later reported that he had talked with Mr. Benjamin over the telephone and Mr. Benjamin said he would immediately undertake to enforce the Act in every way and would revoke the license of all agents who were connected with the mortuary, funeral director or undertaking establishment; deponent's attorney further said that the insurance commissioner stated that it was a very important act which he would have to enforce and that he saw no necessity for giving the agents the statutory 10 days notice

before revoking licenses as the Act seemed plain to him and to disqualify anyone connected with an undertaking establishment to be licensed and that he could get that in-
[fol. 28] formation from the applications upon which he had already licensed them because such applications and the law required the applicants to state the business in which they were engaged for the five preceding years. Deponent's attorney also advised him that he requested Benjamin to get a written opinion from the Attorney General before undertaking the enforcement and the reply was that he didn't think it was necessary but that he might telephone the Attorney General; that all this was communication to the deponent by his attorney.

That the deponent has an individual investment of $13,000 of the capital in surplus in Family Security Life Insurance Co. That the J. F. Floyd Mortuary, Inc., one-half of whose stock he owns has $26,000 invested in the capital and surplus of the Family Security Life Insurance Company.

That W. Russell Floyd, the owner of the other one-half interest of the J. F. Floyd Mortuary, Inc., owns $13,000 stock and surplus of the Family Security Life Insurance Co.; that if the Act assailed is permitted to be enforced, it will destroy the good will of the Family Security Life Insurance Co., cripple it in its operation, deny it the right to retain its carefully selected and highly productive insurance agents who have been duly licensed prevented from selling insurance policies aggregating from $110,000 to $115,000 of insurance weekly, destroy its agency organization, impair its agency contracts, deprive agents of their contracts and compensation and the company of the service and productivity, coerce the reorganization of the plaintiff's insurance company, deny its stockholders the right to hold office and expel deponent from the presidency and managership, he, having been the originator and the driving force which has resulted in the record of success herein above indicated, subject the plaintiff's insurance company to the expense of hiring other agents, in the meantime crippling it through illegal disqualification of its agents and entailing the loss of business naturally and necessarily incident to the dismissal of its agents and the smaller force of agents at work until other agents can be hired and trained.

[fol. 29] That deponent is informed and believed that he would be wholly remediless if the law should be enforced

for a period of time and even though it be later declared invalid because there would be no source in which he could recoup the loss and damage in the disruption and interruption of the business and nobody whom he could sue.

Specimen copies of the two types of policies written by Family Security Life Insurance Company, are hereto attached and marked respectively Exhibit "A" and "B". The issuance of policies, of which these are specimen, has been fully approved by the Insurance Commissioner of South Carolina and against the policies issued the legal reserves required by South Carolina law are fully maintained.

(S.) J. Gordon Floyd.

Sworn to before me this 27th day of April, 1948.
(S.) Bruce Littlejohn, Notary Public of South Carolina.

(Here follows 4 Photolithographs, side folios 30-33)

"PAGES 18A - 18D ON
FOLLOWING CARD"

[fol. 34] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF AMENDMENT TO COMPLAINT—Filed April 29, 1948

To the Defendants:

Notice is given that the Complaint heretofore served is amended by adding at the end of Paragraph one the following:

"The matter in controversy exceeds, exclusive of interest and cost, the sum of Three Thousand ($3,000.00) Dollars".

Notice is further given that the Court will be asked to permit this amendment to be incorporated by addition to the first Paragraph of the printed transcript, copies of which have heretofore been furnished you, in writing by pen and ink.

April 28, 1948.

(S.) E. W. Johnson, C. E. Daniel, T. Sam Means, Jr., Attorneys for Plaintiffs.

[fol. 35] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS—Filed May 12, 1948

Now comes the defendants and move to dismiss the complaint and the rule upon the following grounds:

1. The District Court has no jurisdiction in that the complaint alleges no substantial Federal question.

2. The complaint fails to state a claim upon which relief can be granted.

(S.) John M. Daniel, Attorney General; T. C. Callison, Assistant Attorney General; J. Monroe Fulmer, Assistant Attorney General.

Of Counsel: (S.) Edgar A. Brown, Barnwell, S. C.; R. N. Ward, Greenville, S. C.; Robinson & Robinson, Columbia, S. C.

May 8, 1948.

[fol. 36] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER—Filed May 13, 1948

The defendants, by way of answer, would respectfully show to the Court:

1. They admit that the plaintiff claims that this action arises under the Constitution of the United States but on information, advice and belief deny that a cause of action is stated under the Federal Constitution.

2. On information and belief based on the records in the office of the Insurance Commissioner the corporate defendant was chartered in 1936 as the Pee Dee Life Insurance Company, that this company became insolvent, that its charter was sold in receivership proceedings, that its purchasers changed its name to the Future Security Life Insurance Company in 1941, that its name was changed to the Family Security Life Insurance Company on June 13, 1947. The records further show that the original authorized capital was $5,000.00 which was increased to $50,000.00 in 1947; that the paid in capital was only $500.00 until 1947 when it was increased to $11,860.00 at which figure it stood on December 31, 1947. According to the [fol. 37] last annual statement on file there was total insurance outstanding on December 31, 1947 of $500.00.

The records of the State Insurance Commission indicate that sixty-eight individuals, including J. G. Floyd and William E. Lanford have been licensed to write policies in the corporate plaintiff. These defendants have no other information as to the business of the plaintiffs and demand strict proof of any other allegations of paragraph 2 pertinent to any issue here.

3. These defendants have no information sufficient to form a belief as to the allegations of paragraph 3.

4. These defendants admit that J. G. Floyd and William E. Lanford have been licensed by the State Insurance Commissioner to write policies in the Family Security Life Insurance Company.

5. John M. Daniel is the Attorney General of South Carolina charged with the duties of that office and resident in the Eastern District of South Carolina.

6. L. George Benjamin is the Insurance Commissioner of South Carolina and charged with the duties of that office. On information, advice and belief that the Insurance Commissioner has the powers prescribed by law, including the power to revoke any licenses in conflict with the statute described in paragraph 8 of the complaint.

7. Paragraph 7 is admitted.

8. These defendants admit that the plaintiff seeks to enjoin the enforcement of the Act 1083 of April 14, 1948 described herein (H-1141, S. 1606).

9. The statute described in paragraph 8 applies to all life insurance companies, except fraternal benefit societies, licensed to do business in South Carolina. The defendants do not have information as to the motive and intent of this regulation but aver that the legislative intent in enacting a statute is irrelevant here.

[fol. 38] 10. That the Insurance Commissioner expects to perform any duties placed upon him by the aforesaid statute as well as any duties under any other law but will administer these laws fairly and impartially.

11. On information, advice and belief that the Act of April 14, 1948 does not contravene the Federal or State Constitution in any of the particulars alleged in paragraphs 11, 12 or 13.

12. These defendants ask reference to the provisions of the statute for its terms but deny that there is any equity in the bill by reason of any allegations of paragraphs 14 or 15.

13. They deny all allegations not herein admitted.

For a Further Defense

14. That for many years the public policy of South Carolina as expressed in its statutes has been against the writing of any burial insurance payable in services.

15. On information and belief that the plan of the plaintiff undertakers to buy and operate a life insurance business with insurance offices in mortuaries, with undertakers and their employees as soliciting and collection agents for the insurance company and with premiums paid by policy holders at undertaking establishments, and with policies payable at mortuaries is a subterfuge to avoid the public policy of the State as expressed in statutes prohibiting the payment of insurance in services. That when this matter came to the attention of the Legislature it enacted the statute referred to in the complaint.

16. This statute is a proper exercise of the police power of the Legislature in regulation insurance and undertaking, both of which are businesses affected with a public interest.

[fol. 39] Wherefore the defendants ask that the temporary injunction be dissolved and the complaint dismissed.

May 10, 1948.

(S.) John M. Daniel, Attorney General. T. C. Callison, Assistant Attorney General. J. Monroe Fulmer, Assistant Attorney General.

Of Counsel:

(S.) Edgar A. Brown, Barnwell, S. C., R. N. Ward, Greenville, S. C. Robinson & Robinson, Columbia, S. C.

[fol. 40] Exhibit "A" to Answer

District Court of the United States

[Title omitted]

Affidavit of Douglas C. McDougald

Douglas C. McDougald, of 600 S. Main Street, Anderson, S. C., being first duly sworn, says:

That he is a mortician and the owner and operator of an undertaking establishment in Anderson, S. C. That he

is a member of the Association of Funeral Directors of South Carolina, and was appointed Chairman of a group of approximately 60 undertakers at a meeting in Columbia to present their views in connection with H.B. 1141, S.B. 1606 which was enacted into law at the last term of the General Assembly of South Carolina.

That around the 1st of February 1948 J. Gordon Floyd, one of the plaintiffs, one of the owners of Floyd's Mortuary establishment of South Carolina, and one of the owners of the Family Security Life Insurance Company, called on this deponent and outlined to him the plan of operation of the Family Security Life Insurance Company, telling this deponent that the controlling stock in this Company was owned by the Floyd interest but that other undertakers would be [fol. 41] allowed to buy stock. Mr. Floyd stated that there was a popular demand for prefinanced funerals, which would be furnished under the plan, whereby the undertakers and employees would be agents of the insurance company; that the premiums for the business written would be payable at the undertaking parlor; that the policy would carry a jacket containing the name of the undertaker through whom the business was written, and that letters would be written to the policyholders by the insurance company on stationery of the undertaker so that in the event of a death the policyholder would naturally come to that undertaker for a funeral service. Mr. Floyd advised that the undertaker would be expected to equip an office, to select an agent who would be commissioned to write the Family Security Life Insurance Company business, and the undertaker would be expected to collect the premiums on the policy for a collection fee of five per cent.

Mr. Floyd advised the deponent that the effect of going in with this insurance plan would be to freeze the undertaker's business and to monopolize and perpetuate the business for the existing morticians and to keep out of the business returning veterans who had studied the embalming business and were in greater volume than could normally be absorbed by the established undertakers.

That this deponent has investigated the working of a similar plan of prefinanced funerals in Alabama and this investigation indicates that the plan, started in the 1930's, has resulted in the destruction of the business of a large

per cent of the funeral directors who did not go into the plan and has resulted in more than fifty per cent of the undertaking business in Alabama being now operated by insurance companies.

That your deponent was present at the hearings on the Bill before the House and Senate Committees. During the hearing before the Senate, the statement was made by Mr. Charles Honig, Vice-President of the Family Security Life Insurance Company, that during the week immediately pre-
[fol. 42] ceding the Senate hearing, which was had on the 7th or 8th of April, 1948, the Company had written approximately $125,000.00 worth of this insurance and had stepped up its volume to that figure by paying the agents a very liberal commission.

This deponent has had experience in competing with this type of plan from one or more undertakers resident in Georgia near the South Carolina line, and recently found that a family that preferred the deponent to prepare the body of a member of the family for burial was forced to turn the body over to the Georgia undertaker because of the existence of a policy similar to the one in issue here was owned by a member of the family and that member was of the opinion it was payable only by this one undertaker.

This deponent is of opinion that the spread of this type of insurance would be seriously detrimental to the people of the State in that an undertaker with a "mortgage" on a large number of funerals incident to the working of this plan of insurance would not be inclined to keep up his equipment or service and the funeral business would go not to the director with quality service, but to the director with the most persuasive agents writing the prefinanced funeral.

In deponent's opinion, five per cent would not cover the cost of collecting and an undertaker would have to add to the cost of the funeral some amount to compensate him for his loss in this collection business.

The effect on the undertakers from the spread of this type of business would be that they would be faced with the alternative of either going out of business or going into the insurance business; that this effect on the undertakers and on the public at large was shown to the General Assembly of South Carolina at its recent session and the Act quoted

in paragraph 8 of the complaint was passed by the House by a vote 73 to 11, and by the Senate by a vote of 31 to 10.

(S.) Douglas C. McDougald. (Seal.)

Sworn to before me this the 4 day of May, 1948. (S.) Dan T. Marett (L. S.), Notary Public for South Carolina.

[fol. 43] EXHIBIT "B" TO ANSWER

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF DOUGLAS C. McDOUGALD

Douglas C. McDougald, of 600 S. Main Street, Anderson, S. C., being first duly sworn, says:

That he is an undertaker and operates a funeral home in the city of Anderson, S. C. That he, being interested in keeping the insurance business and funeral business divorced, believing that it is for the best interest for the public at large, solicited statements from funeral directors in the State of Alabama as to the result of this practice having been in existance in that state for some time.

Those contacted were very free in their talk as to the detriment of the funeral business and diminishing quality of service provided the public at large by this practice. However, these funeral directors refused to make affidavit to this effect saying, "that their every operation was controlled and dominated by these insurance companies, and that even through their businesses were in their names they had contracted to coöperate with these companies and for fear of losing their businesses", which apparently were mortgaged to the insurance companies that formerly owned them.

[fol. 44] This to me is a deporable condition.

(S.) D. C. McDougald. (Seal.)

Sworn to before me this 4 day of May, 1948. (S.) Dan T. Marett, (L. S.), Notary Public for South Carolina.

[fol. 45] EXHIBIT "C" TO ANSWER

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF RICHARD H. WOOD

Richard H. Wood, of 300 W. Poinsett Street, Greer, S. C., being first duly sworn, says:

That he is president of Wood's Mortuary, incorporated, Greer, S. C.

That he has read the attached affidavit of Douglas C. McDougald; that the portion thereof regarding the plan of plaintiffs to establish a funeral insurance business is substantially the same outlined to this deponent by one of the plaintiffs herein; that he was particularly impressed with plaintiffs scheme to channel and secure the funeral business into the mortuaries participating as agents of plaintiff company, subject to its approval and policies of operation.

That, upon information and belief, the said scheme of plaintiffs to write insurance through mortuaries would effectively evade the statutory law of South Carolina of many years' standing which forbids insurance companies to pay benefits in merchandise and services, and further, that plaintiffs' plan of operation, that is selling "prepaid funerals" under the guise of insurance, would either force this deponent and others similarly situated into plaintiffs' plan [fol. 46] or out of the undertaking business.

(S.) Richard H. Wood.

Sworn to before me this the 3rd day of May, 1948.
(S.) Ansel M. Hawkins, (L. S.), Notary Public for South Carolina. (Seal)

[fol. 47] EXHIBIT "D" TO ANSWER

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF THOMAS F. McAFEE

Thomas F. McAfee, of 210 West McBee Avenue, Greenville, S. C., being first duly sworn, says:

That he is in the undertaking business with his brother, in the City of Greenville, under the firm name of Thomas McAfee Funeral Home; that he has read the appended affidavit of Douglas C. McDougald; that he had two conferences with Mr. J. Gordon Floyd around February 1, 1948, Mr. Floyd endeavoring to influence deponent to become an agent of the Family Security Life Insurance Company, to employ a sub-agent or sub-agents to sell what Mr. Floyd described as "prefinanced funerals", to provide an office for said sub-agent or sub-agents to work out of, and a clerk to keep the records and to make monthly collections on all "prefinanced funeral" policies sold by said sub-agent or sub-agents; that said sub-agent or sub-agents, as stated, were to be employed by deponent and under deponent's supervision; that deponent for his services, the use of an office and a clerk to keep the records, was to receive a commission of five (5) per cent of the premium collections on policies sold through deponent's agency; that 5% of collections will, in opinion of deponent, not cover cost of the plan, undertakers having to charge the shortage to funerals; that as a part of said insurance plan the Family Security Life Insurance Company was to send out notices of insurance premiums to policy holders on stationery of Thomas McAfee [fol. 48] Funeral Home; that all policies would be enclosed in a jacket containing the name of the undertaker through whom the business was sold.

That Mr. Floyd repeatedly emphasized, in conversation with deponent, that the effect of going into his insurance plan would be to freeze the undertaker's business and would monopolize and perpetuate the business for the existing morticians, and would keep many of the young men now in embalming schools from opening undertaking establishments in competition with the present undertakers; that deponent understood Mr. Floyd, by reference to young men in

embalming schools, to refer to the large number of veterans who are now attending embalming schools under the GI plan.

That deponent agrees fully with the affidavit of Mr. McDougald as to the result of a similar plan of "prefinanced Funerals" in Alabama, and is of the opinion that the plan of the Family Security Life Insurance Company, as outlined by Mr. Floyd, will result in a monoply of the undertaking business in South Carolina and the Insurance Company in a few years owning a very large per cent of the undertaking establishments in the State; that in the opinion of deponent the freezing of the business among a few undertakers will also result in lowering the standard of service.

That Mr. Floyd repeatedly stated to deponent that he was offering his plan of "prefinanced funerals" to the undertakers; that they could take it or leave it as they saw fit, but that in a comparatively short time undertakers who did not take it would find their business rapidly diminishing, and implied that the undertaker who failed to enter into the plan would soon be frozen out of business.

(S.) Thos. F. McAfee.

Sworn to before me this the 5th day of May, 1948.
(S.) Pat M. Cheatham, (L. S.), Notary Public for South Carolina. (Seal)

[fol. 49] EXHIBIT "E" TO ANSWER

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF HAROLD R. SALE

Harold R. Sale of the Town of Lexington, South Carolina, being first duly sworn, says:

That he is a mortician and the owner and operator of Sale Funeral Home, and undertaking establishment in Lexington, South Carolina. That he is a member of the Association of Funeral Directors of South Carolina, and as such was a member of a committee to present the Association's views in connection with H. B. 1141, S. B. 1606,

which was enacted into law at the last term of the 1947-48 General Assembly of South Carolina.

That on or about the tenth day of February, 1948, J. Gordon Floyd, one of the Plaintiffs, one of the owners of Floyd's Mortuary establishment of South Carolina, and one of the owners of the Family Security Life Insurance Company, along with Charles Honig, Vice-President of the Family Security Life Insurance Company, appeared before a meeting of the Central Division of the Association of Funeral Directors of South Carolina, which meeting was held at deponent's place of business in Lexington, South Carolina, and at that time outlined to the present members of the said Central Division of the Association of Funeral Directors of South Carolina, there being some twenty-nine (29) members present, the plan of operation of the Family Security Life Insurance Company. Deponent and the others [fol. 50] present were advised that the controlling stock in this Company was owned by the Floyd interests but that other undertakers would be allowed to buy stock. Mr. Floyd stated that there was a popular demand for pre-financed funerals, which would be furnished under the plan, whereby the undertakers and employees would be agents of the insurance Company; that the premiums for the business written would be payable at the undertaking parlor; that the policy would carry a jacket containing the name of the undertaker through whom the business was written, and that letters would be written to the policyholders by the insurance company on stationery of the undertaker so that in the event of a death the policy holder would naturally come to that undertaker for a funeral service. Mr. Floyd advised that the undertaker would be expected to equip an office, to select an agent who would be commissioned to write the Family Security Life Insurance Company business, and the undertaker would be expected to collect the premiums on the policy for a collection fee of five per cent.

Mr. Floyd advised the deponent that the effect of going in with this insurance plan would be to freeze the undertaker's business and to monopolize and perpetuate the business for the existing morticians and to keep out of the business returning veterans who had studied the embalming business and were in greater volume than could normally be absorbed by the established undertakers.

Deponent is of the opinion that to permit the commingling of this type of insurance with the undertaking business

will force the small undertaker who cannot financially afford to properly staff an insurance agency out of business and will force those undertakers who can afford to properly staff an insurance agency into the insurance business. Deponent is further of the opinion that to place the undertakers into the insurance business would not be to the best interests of the people of the State of South Carolina in that there would be a tendency to capitalize upon the bereavement of a family of a deceased person. This in itself would not be a healthy proposition for the people. [fol. 51] It is deponent's opinion that this type of business would be a further detriment to the people as a whole in that it would raise the costs of funeral throughout the entire State because the additional help needed in order to sell the insurance and to properly handle the same could not possibly be paid for out of the premiums which are charged and accordingly the costs of funerals would have to increase in order to take care of the losses sustained in the insurance business.

(S.) Harold R. Sale.

Sworn to before me this 6 day of May, 1948. (S.) A. Frank Lever, Jr. (L. S.), Notary Public in and for S. C.

[fol. 52] EXHIBIT "F" TO ANSWER

Chattanooga, Tennessee,
May 4, 1948.

To Whom it May Concern:

This is to certify that the undersigned has been in the Funeral Directing business in Chattanooga for the past fifteen years. During that time we have had competition from funeral homes who wrote their own insurance policies, and we find that it is nearly impossible for an independent funeral director to get enough business to justify his staying in business under such conditions.

We also believe that it is detrimental to the interest of the public in the long run. This is the most unfair business practise that we have ever run up against, as it gives the funeral home that writes the insurance policies the first call on most all of the business. We believe it could be

construed as collusion between the insurance company and the funeral home.

Very truly yours, Page-Hancock Funeral Home,
(S.) W. T. Page.

Sworn to and subscribed before me this 4th day of May, 1948. (S.) Elizabeth Clark, Notary Public.
My commission expires October 9, 1950. (Seal.)

[fol. 53] EXHIBIT "G" TO ANSWER

Excerpts of the Hearing Before the Senate Banking and Insurance Committee on March 31, 1948, Entitled In Re: "The Mortuary Bill" (House 1141, Senate 1606; Secretary of State 1083)

These excerpts are taken from a copy of a stenographic report by B. R. Johnson furnished to the Attorney General by counsel for the plaintiffs.

Mr. J. G. Floyd (38-9)

Chairman Mars: State who you are and where you live?

Mr. Floyd: J. G. Floyd. I operate the J. F. Floyd Mortuary in Spartanburg. The firm has been in business for the past 62 years without interruption. That business has withstood depressions and periods of high times, and what not, for 62 years for one reason only, and that is the reason that it gave its clients the best for the money, and they were satisfied. That is the reason that I want to go into the insurance business now—to provide them with an easy low-cost method of paying for funerals. Regardless of what my friends have said, if you will take a map and look at the United States as a whole, and go into this thing, you will see that burial insurance or insurance sold through mortuaries, whatever you want to call it, in some form or another, is sold in 30 states.

Page 43-44:

Mr. Tyson: When the committee was writing the present insurance code of South Carolina, did you have any business with that committee and make any suggestions to them?

. . . . . .

Mr. Floyd: In other words, I knew they were rewriting the insurance code last year, and I called the president of the Funeral Director's Association asking him if he was doing anything to see that our interest was taken care of, and he said "no", and that he didn't know anything about [fol. 54] it so I said, "If I were you I would look into it", but anyhow on my own initiative I had my own attorney to come down here to Columbia and appear before that committee and straighten out a clause because, as I recall, it did not provide, or prevent, rather, anybody from writing insurance which paid off in merchandise. In other words, I was more concerned than anybody else last year, and I am always concerned when it affects my business, and, of course, it was through the efforts of my attorney and myself with the concurrence of the committee that that clause was put back in there, and it was done.

Mr. Tyson: Does the policy that you now write pay off in merchandise?

Mr. Floyd: No sir, I am definitely against that and will fight that as long as I can.

Page 52-53:

Mr. Ward: Isn't it true that this man Brown you speak of from Alabama was a small undertaker down there, a little man with a small business, and he organized this company similar to yours and in a short time he was worth millions of dollars and owned considerably more than 50 percent of all the undertaking establishments in the State of Alabama?

Mr. Floyd: There is a Mr. Lackey who was the man who put it over. He put it over through an insurance company.

Mr. Ward: Isn't it true then that Mr. Lackey organized this insurance business in the State of Alabama and in a very few years he had accumulated millions of dollars, and owned more than 50 percent of the mortuaries in the state?

Mr. Floyd: That is correct.

Page 55:

Mr. Ward: And every policy that has been sold had "Floyd's Undertaking Company" stamped on it, or the undertaking company down in Union?

Mr. Floyd: No, sir, we don't stamp our name on any policy.

Mr. Ward: Well, you permit the undertaker to stick [fol. 55] a tag on there?

Mr. Floyd: How do you know what we do.

Mr. Ward: I am asking you.

Mr. Floyd: We don't.

Mr. Ward: Do you mean that none of the policies that you have issued has your name on it?

Mr. Floyd: Yes, sir, that is correct. None of them have the undertaker's name on it.

Charles Hoenig (63-64)

I spent six months studying the plan in states as far West as California, and I have studied the plan in Kentucky, Georgia and Alabama because we wanted to find out what was good about these various plans, why they needed it, and how it was helping them or hurting them. Now, it was stated a while ago that in Alabama an insurance company owns 50 percent of the funeral homes. Fifty percent of the Brown Funeral Service was bought by Liberty National Insurance Company in 1944, and they own 10 funeral homes now. I think there are probably 200 funeral directors in Alabama. There are all kinds of burial companies there that pay off in merchandise and service. The reason people like it over there is because they can buy a policy at one half the life insurance rate. They can buy a policy at less than cost. The reason they got started is because people thought funerals were too high-priced in Alabama. So everybody there got a policy because it gives them a policy at one half price. The only ones who survive are those who started their own insurance companies. That is one reason why 30 funeral directors in this state want to start it.

Page 68:

Now, on this channeling of proceeds, I think it has been refuted well enough already, but I want to reemphasize that our policy is like anybody else'- policy. There are no names of funeral directors on the face of the policy. Let me tell you this before I give this policy to you: So far as I know with some insurance companies a policy holder can [fol. 56] name anyone as beneficiary. A lot of them can name as beneficiary a funeral home. We don't permit it in our company. We want to stay just as far away from any semblance of a racket as possible. All we are trying to do is give the policy holder a good policy for his money and help the funeral director collect his receivable just.

like any other insurance, but we think we will have a much, much lower lapse rate.

Page 69-70:

Now this is by a funeral director, and writer, and publisher, and I think you can get a pretty good idea that he is in a better position to say, generally, the issue involved. "Let's ask a very frank and fair question. When the subject of funeral insurance is mentioned, when we say funeral insurance, it is really life insurance. When the subject of funeral insurance is mentioned why is it so many wince. Do they shrink away from receiving such tender in payment of a funeral? No. Do they shrink away from the thought in abhorrence of having truck with a scheme that will enable them to collect a profit for the funeral? Is it fear based on the fact that it can become potent as a factor. Certainly insurance is here to stay just as the new hearse, the new chapel, or the new mortuary. Any improvement in service just as any improvement in service. Any time a funeral director adds one of these, he is merely endeavoring to attract business. There is as much reason to say the public benefits from funeral insurance as there is to so regard any life insurance policy. Funeral insurance and life insurance are identical except that the funeral policy is earmarked in the mind of the policy holder." Another trade journal says that "Insurance to cover burial is just as respectable as any other insurance provided it pays in cash, has a legal beneficiary, and pays to a named beneficiary", all three of which we have in our company. Now, Mr. McDougald said if he didn't line up with this he would be put out of business. I can't see that that is any different from a department store saying that if they don't put in a soda fountain like the one next door they [fol. 57] will go out of business, or a real estate man saying that if he doesn't handle fire insurance it would hurt his business. I think it would, and I think if MacDougald, or Bleckley and MacDougald don't go into it, it might hurt them. We have people in Greer saying "does Dick Wood offer it? If he doesn't, I want to take it out with Woodruff in Landrum. They are not restricted there. It would hurt him just as much as if one outfit has a hearse and the other doesn't, but I have always been under the impression that free competition was the backbone of our economy.

[fol. 58] EXHIBIT "H" TO ANSWER

Excerpts from National Selected Morticians Proceedings of the 1947 Annual Meeting, September 23-26, 1947, Sun Valley, Idaho

At a Clinic on funeral insurance at which the plaintiff J. Gordon Floyd participated the following excerpts are taken:

Pages 252-253:

Mr. Frank E. Fairchild (Fairchild Sons, Brooklyn, N. Y.): I came in from another meeting and didn't hear much, but I would like to ask, does Pierce's Plan or your plan or anyone else's plan offer the buyer more than the Metropolitan or the Prudential or those companies; is it any advantage to the buyer?

Mr. Mark Pierce: The only advantage to the buyer, I think, is the fact that what they really buy is a funeral. The Metropolitan goes out and sells life insurance. They can pre-arrange their funeral, and they can pay for it as they want to—monthly, annually, quarterly, ten years, twenty years or a whole life.

Mr. Fairchild: But the man that is buying this policy—wouldn't he be just as well off to buy one from Metropolitan? What advantage is your policy to him?

Mr. Mark Pierce: It is your advantage, not his advantage.

Mr. Fairchild: Not to his advantage?

Mr. Mark Pierce: Everybody in business, if they are honest, are very selfish or they wouldn't be in business. They are in business. They are in business for a profit. If you want business, this is one way you can get business.

These excerpts were presented to one of the legislative committees considering the Bill which became the statute in issue in this cause.

[fol. 59] EXHIBIT "I" TO ANSWER

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF ROBERT Y. WOLFE

Robert Y. Wolfe, of Rock Hill, S. C., being first duly sworn, says:

That he is the owner of the Wolfe Funeral Home, Fort

Mill, S. C., and partner in the Wolfe-Todd-Morris Funeral Home, Rock Hill, S. C.

That he has read the attached affidavit of Douglas C. McDougald; that the portion thereof regarding the plan of plaintiffs to establish a funeral insurance business is substantially the same outlined to this deponent by one of the plaintiffs herein; that he was particularly impressed with plaintiffs scheme to channel and secure funeral business into the mortuaries participating as agents of plaintiff company, subject to its approval and policies of operation.

That, upon information, and belief the same scheme of plaintiffs to write insurance through mo*ar*uaries would effectively evade the statutory law of South Carolina of many years' standing which forbids insurance companies to pay benefits in merchandise and service*a*, and further, that plaintiffs' plan of operation, that is selling "prepaid funerals" under the guise of insurance, would either force [fol. 60] this deponent and others similarly situated into plaintiff's plan or out of the undertaking business.

That deponent was from time to time requested by representatives of the Family Security Life Insurance Company to become an agent of the Company and to write the prepaid funeral expenses policy being issued by the Family Security Life Insurance Company, and finally told this deponent that while they were not threatening him his competitor in Rock Hill, S. C., the Bass Funeral Home, was a stockholder and an agent of the Family Security Life Insurance Company, and that if deponent did not come in he would open up at Fort Mill, S. C. About sixty days ago the Bass Funeral Home of Rock Hill, S. C. did open a funeral home at Fort Mill, S. C., and they are selling insurance of the Family Security Life Insurance Company there at the present time.

(S.) Robert Y. Wolfe.

Sworn to before me this 5th day of May, 1948. (S.) W. W. Robertson (L. S.) Notary Public for S. C.

[fol. 61] EXHIBIT "J" TO ANSWER

Jacket of Policy Being Issued by Plaintiff Corporation

Howard Greene, Representative — 127-01 No.

Placed This

FAMILY SECURITY LIFE INSURANCE COMPANY

Home Office—Spartanburg, South Carolina

Policy of Guaranteed Protection for Prepayment of Funeral Expenses of Nancy Ann Wentz (Name), 116 Marshall St., Rock Hill, S. C. (Address), whose payments of $1.57 are due on the 1st day of each month to Bass Funeral Home, 241 East Main St., Rock Hill, S. C.

To the Policyholder

By this purchase you have made a very valuable addition to your program of family security. Your company stands ready at all times to cooperate with you in keeping your protection in line with your current needs.

If at any time you desire to consider a change in this contract or should anyone propose a change, your best interests will be served by communicating with the nearest representative or agent, or directly with the Home Office of Family Security Life Insurance Company, Spartanburg, S. C.

"Remember . . . Your first duty is family security."

The Family Security Life Insurance Company is owned and operated by South Carolina Funeral Directors for the People of South Carolina.

[fol. 62] Bass Funeral Home

241 East Main Street

Rock Hill, S. C.

DEAR FRIEND,

For a good many years we, as well as other Funeral Directors of this State, have frequently been asked this question: "Do you have a plan for the prepayment of funeral expenses?" Our answer in the past has been "no." This demand has grown to the extent that we determined

to establish a legal and absolutely dependable plan to give the people what they wanted.

Our plan is not new. Similar plans are offered today in twenty-five of the forty-eight states. Among the southern states, 50% of the people of North Carolina carry such protection, 80% of those in Alabama, and in Georgia—where the plan is relatively new—25% of the people have this protection.

The company established to serve the people of South Carolina is known as the Family Security Life Insurance Company, and is owned and operated solely by South Carolina Funeral Directors. The small amount you pay each month never increases, regardless of age or the number of deaths in your community. Family Security operates under supervision of the Department of Insurance and has deposited capital funds with the State Treasurer of South Carolina as a further protection for its policyholders.

For a few cents each month, every member of your family can be protected under this plan, so that when need arises, funds for funeral and other last-illness expenses are immediately available. Of course, under this plan, you are free to call the funeral director of your choice. Also you receive the cash money without delay so that you may select the casket and service that suits your taste.

Are you interested? We are enclosing a self-addressed, postage-paid card for your convenience. Filled out and returned, it will enable you to find out just how little this protection will cost for your entire family. We will have our representative call on you in just a few days, to explain this plan in detail. We know you will find this visit most interesting.

With kindest personal regards, I am,

Yours very truly, (S.) J. A. Bass, Agent, Family Security Life Ins. Co.

[fol. 63]

NOW

IT'S AVAILABLE!

Burial Protection
Through a Sound
Plan
With Your Funeral
Director

J. A. Bass, Agent, Bass Funeral Home

241 East Main St., Rock Hill, S. C.

Burial Insurance Is a Basic Need

[fol. 63a] Here's the Answer to your Security Needs—

WHY SHOULD I HAVE BURIAL PROTECTION?

BECAUSE—

Among thinking people all over the country there is a growing tendency to investigate funeral matters in advance of need.

Burial protection rounds out your program for your family's security. It supplements and protects any savings, life insurance, or hospitalization you may already have.

Although 85% of the people have life insurance today, only 1 person in 6 has life insurance at time of death.

At amazingly low rates a burial of any type desired can be guaranteed.

Burial protection is simple, direct, and dependable. It protects your loved ones from emotional overspending.

WHY SHOULD I CARRY IT WITH MY FUNERAL DIRECTOR?

BECAUSE—

Your Funeral Director is known to you and your community. He has a reputation for courtesy, honesty and fair dealing.

He is interested in thoughtful, respectable, complete services for your loved ones, with the least financial burden to you.

Your Funeral Director is permanent in your community.

His plan for your burial must be dependable. Otherwise he would not be associated with it.

Your Funeral Director is the first person you call in a time of sorrow. To carry your burial protection with him is only logical.

Burial protection is offered only through your Funeral Director, who is a stockholder in the Company.

WHY IS FAMILY SECURITY A SOUND PLAN?

BECAUSE—

Family Security replaces the old idea of leaving funeral expenses until the time of need. It offers you instead a business-like plan: a legal reserve policy which provides for payment of such expenses in advance of need.

It provides immediate cash at a time when it is needed most.

There is no restriction as to choice of funeral director or selection of service.

Your policy is incontestible upon delivery to you.

Every policy issued is approved by the State Department of Insurance.

Family Security is owned and operated by South Carolina Funeral Directors for the people of South —.

It is a legal reserve company under supervision of the South Carolina Insurance Commissioner.

Family Security offers low-cost protection which is good in any State.

FAMILY SECURITY LIFE INSURANCE COMPANY, SPARTANBURG, SOUTH CAROLINA

[fol. 64] WHEN DEATH COMES TO ANY MEMBER OF THE FAMILY—

When death comes, those who remain must also be protected. Burial protection such as this is for the living. Without it, final expenses must be paid from savings or from money borrowed. This means that surviving members of the family may have to undergo hardships, perhaps give up plans for a better home or the children's education—or use up funds saved for emergencies and unemployment.

NOW YOU CAN PROTECT yourself and your family by elimi-

nating all risk of a sudden, unexpected financial burden at the time of sorrow. For this specific purpose, Family Security policies are available in amounts of $125, $250, $500 and $750, depending on your needs and wishes. Whether you already have life insurance or not, it is wise to set aside a few cents each month to provide for the entire family's burial in advance of need.

Every family, regardless of size of income, can cushion the shock of emotional grief as well as the financial strain.

It is a combination of love and foresight that impels thoughtful people to recognize the importance of making arrangements before need. Those left to "carry on" will be ever grateful for this far-sighted kindness.

See your Funeral Director today about a plan for burial protection.

Remember——

Your First Duty Is Family Security

Family Security Life Insurance Company, Spartanburg

Chartered and Licensed by the State of South Carolina

[fol. 65] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO STRIKE THE ANSWER AND ITS EXHIBITS AND FOR JUDGMENT ON THE PLEADINGS—Filed May 17, 1948

Now comes the Plaintiffs, and, through counsel, move to strike the Answer and its exhibits; and for judgment on the pleadings, because:

I

The Answer, in Paragraphs 1 to 13, inclusive, states no sufficient denial of any allegation of fact in the Complaint essential to the cause of action therein set forth.

II

The portion of the Answer denominated "A Further Defense" alleges no more than the long-standing statute of

South Carolina, reenacted in the new Insurance Code of 1947, that burial insurance shall not be paid in goods or in services, and the opinion of the pleaders that the plaintiffs seek to avoid and evade that statute by writing insurance which is payable in money alone under policies approved by the Insurance Commissioner and by agents approved by the Insurance Commissioner and licensed by him (all of which is admitted); there being no fact alleged warranting the expressed opinion or inference; and the Court being fully [fol. 66] as competent as counsel to draw the proper inferences and reach the proper conclusions, counsel for defendants having admitted in Paragraph 9 of their Answer that they have no information as to the motive and intent of this regulation.

III

The exhibits are devoid of relevant factual content and the affidavits of the undertakers are no more than their legal opinions and their opinion on technical matters of insurance, wherein they are not experts; and the excerpts from the hearings before the Banking and Insurance Committee of the Senate serving only to support the legal and factual contentions of the Plaintiffs.

Furthermore, the affidavits, on their face, are a combination of personal prejudice, hearsay, and legal and insurance assertions to which the affiants would not be allowed to testify before this Court.

Wherefore, it is prayed that the Answer and its exhibits be stricken and plaintiffs adjudged entitled to permanent injunction, as prayed.

(S.) E. W. Johnson, C. E. Daniel, T. Sam Means, Jr., All of Spartanburg, Attorneys for the Plaintiffs.

May 17th, 1948.

[fol. 67] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF O. CHARLES HONIG—Filed May 17, 1948

STATE OF SOUTH CAROLINA,
County of Richland:

Before me a duly authorized notary public personally appeared O. Charles Honig, who, being duly sworn, says that he is Vice-President of the Family Security Life Insurance Company.

That thus far this company has paid two death claims, one being under a policy issued on the life of Lillie B. McAbee of Route 2, Chesnee, South Carolina, in the amount of $250.00. The face amount of the policy was paid to Webster D. Cantrell. According to the application he was the son-in-law of the insured, and was named by her as beneficiary in the application and was the beneficiary named in the policy.

A subsequent investigation disclosed that the insured was buried by the mortuary through whose agency the policy was written.

The only other death claim thus far paid by Family Security Life Insurance Company was on the life of Allis C. Benton, age fifty-eight, of Myrtle Beach, South Carolina. In her application Benjamin F. Benton, son of the insured, was named as beneficiary. He was named beneficiary in the policy and the proceeds of the policy in the amount of $250.00 were paid to him.

A subsequent investigation disclosed that the deceased insured was not buried by the mortuary through whose agency the policy was written. The deceased insured in this instance was buried by a competing mortuary who has no connection with Family Security Life Insurance Company.

O. Charles Honig.

Sworn to before me this 17th day of May, 1948. Thos. A. Canthen, Frances D. Staples, Notary Public for S. C.

[fol. 68] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO CERTAIN FACTS—Filed May 17, 1948

It is hereby stipulated by and between counsel of record that the following facts may be considered by the Court as admitted for the purpose of this action. By entering into this stipulation counsel reserve the right to question the relevancy of the facts set out herein:

1. The Family Security Life Insurance Company was chartered in South Carolina in 1936 as the Pee Dee Life Insurance Company with an original authorized capital of $5,000.00 and a paid in capital of $500.00. In the insolvency proceedings involving the Pee Dee the charter [fol. 69] of the Company was sold, and in 1941 was acquired by the plaintiffs, J. Gordon Floyd and W. Russell Floyd. The name of the charter was changed in 1941 to the Future Security Life Insurance Company. It was changed again on June 13, 1947 to the Family Security Life Insurance Company; the authorized capital was increased from $5,000.00 to $50,000.00 during the year 1947 and paid in capital from $500.00 to $11,860.00 during the same year. According to the last annual statement filed in the office of the State Insurance Commissioner as of December 31, 1947, the authorized capital was $50,000.00, the paid in capital $11,860.00, and outstanding insurance $500.00; the deposit with the Insurance Commissioner $1,000.00.

2. The plaintiffs J. Gordon Floyd and William E. Lanford have been licensed by the State Insurance Commissioner to write policies in the Family Security Life Insurance Company.

3. The plaintiffs J. Gordon Floyd and W. Russel Floyd together own all of the capital stock of the J. F. Floyd Mortuary, Inc. The plaintiff William E. Lanford is one of the partners in the Lanford-Boyter Mortuary in Woodruff, S. C.

4. The Family Security Life Insurance Company has thirty-four stockholders, all of whom, except one, either own, manage, supervise, operate or employed by a mortuary

or undertaking establishment. These stockholders include the three individual plaintiffs. Four of the five directors [fol. 70] and the President of the Company are either owners, managers, supervisors or operators of mortuaries or undertaking establishments. The plaintiff, J. Gordon Floyd is President of the corporation, and each of the individual plaintiffs is a director of the corporation. The J. F. Floyd Mortuary owns $26,000.00 of the capital and surplus of the Family Security Life Insurance Company, W. Russel Floyd owns $13,000.00 and J. Gordon Floyd $——. Together they own the controlling interest. Fifty-one of the sixty-eight agents licensed to sell the Company's policies are owners or employees of mortuaries.

5. The volume of business of the corporation is in the amount set opposite the respective dates herein:

Date	*Policies*	*Amount*
Dec. 31, 1947	2	$ 500.00
Feb. 3, 1948	—	———
Feb 17, 1948	—	———
Mar. 27, 1948	481	156,750.00
Apr. 10, 1948	1071	338,750.00
Apr. 17, 1948	1484	453,500.00
Apr. 24, 1948	1876	563,750.00
May 1, 1948	2350	709,000.00
May 8, 1948	2824	838,375.00

6. The statute quoted in paragraph 8 of the complaint was introduced as House Bill 1141 on the 3rd day of February, 1948, was reported out favorably by the Banking and Insurance Committee on February 17, 1948, was passed by the House on April 6, 1948, was passed by the Senate on April 10, 1948, and was approved by the Governor on April 14, 1948. (H-1141, S-1606, Act 1083).

7. John M. Daniel is the Attorney General of South Carolina with his official residence in the Eastern District of South Carolina and charged with the duties and responsi- [fol. 71] bilities of that office. L. George Benjamin is the Insurance Commissioner of South Carolina with his official residence in the Eastern District of South Carolina and charged with the duties of that office. B. B. Brockman is the Sheriff of Spartanburg County and is a law enforcement officer with the general duties incident to the office of Sheriff.

J. A. Bass is the owner of the Bass Funeral Home of Rock Hill, S. C., and a similar establishment at Fort Mill, S. C., which he opened about March 1, 1948. He is an agent of the Family Security Life Insurance Company and sent out over his signature the advertising material which is correctly photostated and attached to the answer of the defendants. Mr. Bass wrote and the Family Security Life Insurance Company issued the latter's policy No. 1091-1 to Nancy Ann Wentz of Rock Hill, S. C., whose age is 67 years, providing for a monthly premium of $1.57 and insurance in the amount of $125.00, the policy being issued as of April 1, 1948 and delivered that policy in a jacket, a correct photostatic copy of which is attached to the answer.

8. At the hearing before the Senate Banking and Insurance Committee on March 31, 1948, at which time the Committee was considering Senate Bill No. 1382, which Bill was identical with the Bill ultimately passed, various statements were made to the Legislature by various witnesses. A copy of that hearing consisting of ninety pages was stenographically transcribed by B. R. Johnson for the [fol. 72] plaintiffs and may be exhibited to the Court in this proceeding. While this stenographic copy may not be entirely accurate or complete it carries substantially the statements which were made by the witnesses whose testimony is transcribed.

9. When the new Insurance Code of South Carolina was being considered by the General Assembly at its 1945 Session J. Gordon Floyd was instrumental in obtaining the incorporation into the Insurance Code of Section 65 (1947 Acts, p. 350) in its present form.

——, Attorney for Plaintiffs, —— ——, Attorney for Defendants.

May —, 1948.

[fol. 73-74]—10. The Family Security Life Insurance Company is now the only industrial life insurance company domesticated in this State which writes life policies on people over the age of sixty-five.

[fols. 75-76] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Plaintiffs' Supporting Affidavits and Affidavits in Reply

AFFIDAVIT OF JOHN E. BLACKWELL

STATE OF SOUTH CAROLINA,
County of Spartanburg:

Before me as duly authorized Notary Public personally appeared John E. Blackwell, who being sworn, says:

That he is a resident of the state and county aforesaid, 63 years of age, and has lived in this county all his life. That as of March 1, 1948, he has been connected with the [fol. 77] Woodmen of the World in selling its insurance policies in Spartanburg County and for the past two years has been District Manager for Spartanburg, Union and Cherokee Counties. For forty years he has been a member of the Woodmen of the World. That for many years he has known M. W. Bobo, Sr., who was founder and owner of the M. W. Bobo Funeral Home in Spartanburg, this concern still *en- still* engaged in the undertaking business in Spantanburg and the active management is now in M. W. Bobo, Jr. Up until a few years ago, M. W. Bobo, Sr. was the active manager as well as owner of this business and deponent knows that while M. W. Bobo, Sr. was active in the undertaking business he was also active in writing policies of Woodmen of the World Insurance. That for some 25 or 30 years M. W. Bobo, Sr. was State Manager, for the State of South Carolina, in writing policies for the company and during that period of time M. W. Bobo, Sr., wrote literally thousands of policies for the Woodmen of the World. Deponent also knows that during the time he was State Manager for the Woodmen of the World to all outward and general appearances, he (M. W. Bobo, Sr.), maintained his insurance office in the same building and ran it in connection with his undertaking business.

(S.) John E. Blackwell.

Sworn to and subscribed before me this 1st day of May, 1948. (S.) John H. Nolen, Notary Public for South Carolina.

AFFIDAVIT OF A. D. CUDD, JR.

Before me, a duly authorized Notary Public, personally appeared A. D. Cudd, Jr., who, being sworn, says:

That for 14 years I have been a qualified insurance agent licensed by the State of South Carolina. I am a stock-
[fol. 78] holder in and vice-president of Cudd and Coan, Inc., a South Carolina corporation engaged in selling all types of insurance. In connection with my own business, and my general knowledge of all types of insurance I know that banks chartered under State and Federal laws, through their employees as agents, sell all types of insurance, including life. I know that Building and Loan Associations, organized under the laws of and licensed by the State of South Carolina, through their employees as agents, sell all forms of automobile insurance and life insurance. Automobile dealers, who are required to be licensed under the laws of the State of South Carolina, sell automobile insurance and life insurance. Real Estate firms sell all forms of Insurance, including life, likewise department stores sell insurance, including life and in the larger department stores sell insurance, including life and in the larger department stores in the United States, I have observed branch offices of the American Mutual of Boston, from which you can buy many types of insurance. Personal Loan Companies sell fire and life insurance and some of these companies make the carrying of the latter compulsory.

The type of life insurance sold by the above listed companies and agents generally provide that the proceeds of the life policy contract are to be used primarily, if not exclusively, to pay any indebtedness due the bank, lender, or seller as the case may be.

Transportation companies, such as airlines, railroads, and bus lines all sell accident insurance covering loss of life —through their employees as agents.

I am acquainted with a lawyer in the State of South Carolina who is president and principal stockholder of a life insurance company, principal stockholder and president of a fire insurance and is, at the same time, an auto-
[fol. 79] mobile dealer and president of a Federal Building and Loan Association; it is not unusual for professional people, including lawyers and others engaged in semi-professional occupations, such as undertakers, to sell various types of insurance, including life.

I have studied the policies and the method of operations of the Family Security Life Insurance Company. The policy itself is similar in all respects to that sold by other companies doing business in South Carolina engaged in selling the so-called 'industrial policies.' In my opinion, the method of selling the policies through a mortuary, undertaking establishment or funeral home or through the agents, servants, officers, or employees thereof meets and satisfies a public demand for a particular type of insurance. I studied and examined their method of doing business with a particular reference to any adverse or unfavorable effect it could possibly have upon the public in general; I found none.

(S.) A. D. Cudd, Jr.

Sworn to and ascribed before me this fourth day of May, 1948. Olin G. Isom, Notary Public of South Carolina.

AFFIDAVIT OF G. H. GOLDFINCH

STATE OF SOUTH CAROLINA,
County of Horry:

Personally appeared before me, G. H. Goldfinch, who being duly sworn deposes and says: That he is a funeral director and engaged in the funeral business in Conway, Horry County, South Carolina, and that his funeral home, having been established by his father, has been in business for 35 years; that he and his father are also engaged in the [fol. 80] furniture business, having been in this business for 35 years; that both he and his father are Agents for the Family Security Life Insurance Company; that they were duly licensed as Agents for this Company by the Insurance Commissioner of South Carolina for the year ending March 31, 1948, and that their licenses were renewed in March, 1948, and are currently in force, expiring March 31, 1949.

That his funeral establishment is located approximately thirty (30) miles from the North Carolina State line and that for the past ten (10) years he and other South Carolina funeral directors, particularly those located nearer the North Carolina line than he, have suffered the loss of funeral business because many of the citizens of this State, residing in their community, have patronized North Carolina

funeral homes because the deceased members of their family carried a North Carolina Burial Association policy which bound the insured to be buried by the North Carolina funeral home in order to realize any benefits from the burial certificates.

That for the past four (4) years in particular, the number of people in his community carrying the North Carolina Burial Association plan have materially increased to the extent that his funeral business has lost from ten (10) to fifteen (15) services each year to North Carolina funeral homes because of the burial policy benefit which was paid off in funeral merchandise and services.

That for the past several years he, and/or his father, has met with approximately twenty (20) other South Carolina funeral directors in meetings referred to as Pee Dee Group Meetings of the South Carolina Funeral Directors and Embalmers Association, and that at each of these meetings all firms represented voiced the same bitterness toward the encroachment of a burial plan approved by a neighbor [fol. 81] State but barred by law from this State, and that in the early part of 1947 the Pee Dee Group Meeting requested and obtained the presence of the Insurance Commissioner of South Carolina at its meeting held at the Cox Funeral Home in Mullins, South Carolina, in an effort to obtain the advice and the assistance of his department in stopping and preventing the sale of North Carolina burial certificates to citizens of South Carolina.

That although the Insurance Commissioner was very cooperative and sympathetic and although he promised the full support of this department in remedying the above situation, the funeral directors of the Pee Dee Group have experienced no improvement in the situation.

That he knows of at least four (4) funeral services during 1948 which would normally be expected to be serviced by his funeral establishment, Goldfinch's, Incorporated, of Conway, South Carolina, but which services have been handled by North Carolina funeral homes because the deceased's survivors did not wish to lose their one hundred ($100) dollars credit with the North Carolina firm.

That he believes the operation of the Family Security Life Insurance Company, of which he is an Agent and Stockholder, to be the only practical remedy for his situation since it will supply the apparent demand of the people in his community to remove the risk of financial burden and

distress at a time of death by paying small monthly amounts to the funeral director in their community in advance of need.

(S.) G. H. Goldfinch.

Sworn to before me this — day of May, 1948. — —
(S.) Notary Public for South Carolina.

[fols. 82-83] AFFIDAVIT OF O. CHARLES HONIG.

STATE OF SOUTH CAROLINA,
County of Spartanburg:

Before me, a duly authorized notary public, personally appeared O. Charles Honig who being duly sworn, deposes and says that he is Executive Vice-President and Secretary of the Family Security Life Insurance Company, but that before assuming the duties and responsibilities of that office he was employed by J. Gordon Floyd to conduct a comprehensive survey and study of the various types and forms of burial insurance and funeral insurance as were being offered the public in other States; that J. G. Floyd informed the deponent that Floyd desired the study made because he and other South Carolina funeral directors realized the need and the public desire for some similar insurance plan in this State, that if they decided to offer such a plan they wanted it to be as sound and practical as possible, and that they preferred not offering the insurance policy of a privately owned life insurance company.

That deponent spent approximately eight months discussing funeral insurance with executives of life insurance companies and funeral directors and thoroughly studying the background and actual operation of life insurance plans offered through funeral homes in other States, and that to the best of his knowledge, information and belief, his findings were as follows:

1. Although some forms of assessment burial associations appeared earlier in the United States (e. g., Ancient Order of United Workmen—Pennsylvania, 1868), the greatest development of this type of insurance occurred among the Southern States during the late 1920's and early 1930's. During depression times many of the people of the South-

[fol. 84] ern States had insufficient money to purchase 20-Pay and endowment-type insurance policies and instead banded themselves together with others in their community to form burial associations. As one writer so aptly described it:

> "When every penny has to be counted, lest some that will later be required for food be spent for unnecessary things, with a still unsettled balance at a grocer's for food during the last shutdown of the mill, and with rumors of dull times and another shutdown coming, the harrassed housewife can see no possibility of paying out money to insure John's life. 'He's strong and well now; besides the rate is out of reason.' 'Yes, a few pennies a week for a little policy to bury us with. We must do that, for we could not think of a county burial, but that is hard enough'."

Thusly, the time-old custom of burial clubs gained momentum in the South, particularly among the people of poor means. Generally each community had its own separate club or association and dues or assessments were levied according to the frequency of deaths among members of the association, each member paying the same amount regardless of age or state of health. Payments were made to the local undertaker who usually helped organize such groups, it being to his interests for the people to have some funds for burial of their dead. In most cases membership in an association provided a specified funeral service and casket upon death, rather than payment of a cash sum, and benefits were restricted to the local funeral home.

2. Such community burial groups were financially and actuarially unsound. They ignored sound actuarial principles such as assessing the cost fairly among members and arranging the financing so that the cost would not continue to increase until it became prohibitive. Each member was assessed the same amount, irrespective of age. As the mem- [fol. 85] bers' ages increased, the proportion that died each year increased. Contributions that at first seemed sufficient to provide the promised benefits proved inadequate, and many societies were unable to meet their obligations and failed. Assessments were not based on mortality experience nor were policyholders' reserves established. If a group failed to continually add younger members the fre-

quency and amount of assessments often became prohibitive. Occasionally an unscrupulous undertaker would assess more often than necessary or abandon his business and leave town with the group's funds. Such conditions early led to action by the legislative bodies of most Southern States.

3. Most Southern States permitted the burial groups to continue but placed them under State regulation and supervision. In Mississippi, where today 1,592,158 people carry $175,828,692.20 burial insurance, the Commissioner of Insurance, Jesse L. White, states in a letter dated February 24, 1948:

> "In 1928 our Legislature enacted a law providing for the organization and regulation of burial insurance companies and associations. At first the business was chiefly with the low income group and, of course, the colored folks. The burial insurance business, however, has become so popular that now such contracts are carried by people of means. At present there are 155 licensed and operated burial insurance associations, 110 of which are owned by white people and 45 by colored.
>
> "The growth of the business in Mississippi indicates that there was a need for this type of coverage, and it is our opinion that it is good both for the public and the funeral directors."

In North Carolina a Commissioner of Burial Insurance was established, the amount of the assessments was varied slightly for each of four age groups, some regularity of as- [fol. 86] sessment frequency recommended, and periodic State audit of operations provided for.

The State of Oklahoma established a State Burial Association Board to supervise and regulate its associations, which Board reports today that the 300 such companies operating in Oklahoma have approximately one billion dollars of burial insurance in force today. (There was only one and one-half billion dollars of all types of life insurance in force in the State of South Carolina as reported in the Fortieth Annual Report of the South Carolina Insurance Department—1947). The State of Arkansas placed its 165 burial associations under the supervision of its Bank Commissioner, who reports $325,000,000.00 of such insurance in force.

Similar State regulation of burial insurance was estab-

lished in Tennessee, Louisiana, Texas, and Kentucky, all of which States had and still have burial plans similar to those of Mississippi and North Carolina.

All of the above mentioned States, however, have continued to permit the assessment plan with no legal reserves, and payment of the policy benefits in funeral merchandise and services, which benefits are valid only with the funeral establishment to which payments have been made.

4. In the State of Alabama, and to some extent in Tennessee, State regulation required that legal reserves be established and premium rates be varied according to age of the insured and his life expectancy under accepted mor-ta--ty studies. Funeral benefits, however, are still paid in funeral merchandise and services and benefits are restricted to the funeral establishment through which payments are made.

5. In Georgia and South Carolina laws were passed during the 1930's prohibiting payment of benefits in funeral [fol. 87] merchandise and services. Section 8000, *Insurance Laws of South Carolina* (1947 Recodification) provides:

> "It shall be unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rendered.

A similar Georgia statute prohibits a policy or certificate of insurance providing anything other than cash.

6. Because many of Georgia's neighbor states had "legalized" insurance companies to make funerals available on their policies or certificates, and because people from these states migrated into Georgia and brought with them this custom and demand, and because Georgia funeral directors lost funeral services to funeral homes in adjacent states permitting merchandise benefits, and because public acceptance of this type of insurance was so great in other states, there developed during the late 1930's a constant demand on the part of the Georgia funeral director as well as a sort of submerged public demand that something be done to provide Georgia citizens an insurance policy designed for funeral benefits.

Accordingly, in 1940, approximately 190 Georgia funeral directors became stockholders and agents of a newly formed life insurance company whose only purpose was to fill this demand and need. This life insurance company, owned by funeral directors, complied with all laws and met the same requirements and qualifications required of every other life insurance company and sold, and is presently selling, life insurance contracts which pay the face amount of the policy in cash benefits to a beneficiary (not a funeral director) named by the insured. This arrangement satisfies [fol. 88] the public demand for a funeral policy because payments are made through a funeral-director-agent. The deceased's family, however, has complete freedom of choice as to selection of both funeral home and funeral service.

As evidence of the widespread public acceptance and approval of this company and its plan, after seven years of operation it has over 200,000 policyholders in Georgia and approximately $50,000,000.00 insurance in force. The largest policy it issues is for $500.00; the smallest is for $100.00.

7. Life insurance companies identical to the Georgia company have been organized and are being operated by funeral directors in North Carolina, Texas, Kansas, California, Washington and South Carolina, to the deponent's knowledge. Life insurance or funeral insurance is being sold by funeral directors in twenty-five of the forty-eight States.

8. Several reasons exist, particularly in the minds of the laboring and farming classes, which account for the public's desire to carry a small-value policy through the local funeral director:

A. The people feel their local funeral director is more permanent in their community than is the average industrial insurance agent who collects his weekly "debit" and who is constantly being replaced by another agent, unfamiliar to the policyholders. Evidence of this public sentiment is found in the alarmingly high lapse ratios common to weekly industrial life insurance. (During 1946 South Carolina industrial life insurance companies issued $201 million in new insurance and lapsed $126 million.)

B. Funeral homes normally are among the oldest established businesses of a community. It becomes a

[fol. 89] family tradition to use a certain funeral director just as one uses the family doctor or joins the church of his parents and grandparents. This feeling towards the funeral director arises largely because he has fulfilled the confidence placed in him during the years. Since life insurance is an auxiliary service to his principal business they feel—whether based in actual fact or not—that his insurance policy must be reliable.

C. The people believe it is logical to carry their insurance against the risk of unexpected burial expenses with a funeral director just as they carry automobile insurance with their automobile dealer, fire insurance with their realtor and hospital insurance with their hospital or physician.

D. Funeral directors not offering life insurance are frequently approached by people who desire to prearrange their funeral service and pay for it in advance. Since the funeral director has neither facilities nor knowledge to handle investments these people must pay the full amount of their prearranged service. Through the mechanics of life insurance cost of such prearrangements can be materially reduced because of guaranteed interest rates and actuarial expectancy.

E. People of substantial means with large amounts of life insurance are interested in a small-amount policy through their funeral director in an effort to prevent their survivors from over-spending on their funeral arrangements and service. They may carry a small funeral policy which they set aside and earmark for their funeral, thereby preserving the proceeds from the remainder of their life insurance program for the [fol. 90] readjustment and benefit of their survivors.

9. The history of burial protection, particularly in the southern States, has established as an inherent part of such insurance that it be bought from the funeral director. In some States (including Georgia and South Carolina) the law has declared burial insurance plans to be life insurance and thereby required them to meet the same standards and regulations as [illegible] insurance. Where companies

have met the same legal requirements as all other life insurance companies the deponent's studies revealed no violation of public policy or public welfare by such companies so established which employ funeral directors as agents. To prohibit the sale of life insurance by funeral directors is to prohibit and destroy the conduct of such business in the very manner in which the public wants it conducted.

10. Although the total of life insurance in force stood at $184,364,828,708.00 by the end of 1946 (an average policy of $1316.89 on each person in the United States), statistical studies by the Metropolitan Life Insurance Company show that 39% of the ten million persons over age 65 are living on charity (1947). Extensive questionnaire studies conducted on a national basis during 1947 by Funeral Service Survey Company of Chicago, Illinois, indicated that only 20.5% of all funeral bills were paid by life insurance while 8.3% were paid by funeral insurance. Commenting on this study, Mr. Leroy C. Vincent, Director of Funeral Service Survey stated:

> "FSS percentages on payment of funeral bills by life insurance coincide with figures released by the insurance companies to the effect that only one person in six has life insurance at time of death, although a current census of policyholders will show that 85% of the people have life insurance today. The signifi- [fol. 91] cant figure in the above is the rise of funeral insurance, which paid for one out of every twelve funerals."

The deponent further says that upon presentation of the above findings to Mr. J. G. Floyd that deponent was employed as Executive Vice-President of the Family Security Life Insurance Company and that deponent began laying the groundwork for expansion of the activities of said company;

That in early October, 1947, the deponent employed William Wallace, an actuary, to develop new policy contracts, non-forfeiture values and premium rates for the Family Security Life Insurance Company; that the development of this actuarial work was delayed until December 15, 1947, while the company and its actuary awaited a decision by the Hon. L. George Benjamin, Insurance Commissioner, regarding adoption by this State of recommenda-

tions made to all states by the Guertin Committee of the National Association of Insurance Commissioners, which recommendations are generally regarded as being in the policyholders' favor and all or part of which are already law in twenty-nine other states; that when, in late December, 1947, no definite word had been obtained as to adoption of said recommendations by this State, the deponent, in consultation with his actuary, decided to adopt the so called Guertin recommendations for deponent's company, even though not required to do so by the laws of this State or the rulings of the Insurance Commissioner, and even though such adoption would require greater policyholder reserves by Family Security Life Insurance Company and would result in the company paying larger surrender values to its lapsing policyholders than were required or being paid by all the competing domestic companies; they not being on the Guertin basis.

[fol. 92] That on December 4, 1947, deponent and Mr. Floyd met in Columbia with Hon. L. George Benjamin, Insurance Commissioner, and Franklin B. Dana, Actuary for the South Carolina Insurance Department, to discuss the company's plans for using funeral directors as agents and to discuss its reasons for so doing. At this time Mr. Benjamin said that he was familiar with the problems of South Carolina funeral directors located near the North Carolina State line and that it was impossible for his Department to eliminate the North Carolina burial association plan being written in South Carolina because he could not catch them writing it in South Carolina and they could always say it was written across the line in North Carolina. Mr. Benjamin further stated that in his opinion a company of the nature of Family Security Life Insurance Company—owned and operated by South Carolina funeral directors—would afford the most practical solution to the North Carolina problem; and further that, after considering the plan of said company he saw no objection to its method of employing funeral directors as its agents, and that subsequently the Insurance Commissioner licensed forty-one funeral directors and employees of funeral homes as agents of said company, which licenses were for the year ending March 31, 1948; and they along with seventeen other funeral directors and employees of funeral homes were licensed for the year ending March 31, 1949.

That during the months of December, 1947, and Jan-

uary, 1948, new policy contract provisions, tables of minimum values and tales of non-forfeiture values were submitted to the Insurance Department for review and approval; that in February, 1948, Mr. Franklin B. Dana, Actuary for the Insurance Department, requested said company to "give further consideration to the question of [fol. 93] issuing policies at ages beyond 65", further stating: "You are undoubtedly aware of the difficulties connected with underwriting applicants at advanced ages and you are also indoubtedly aware of the fact that policies are not generally issued to people over 65 years of age. Should your Company issue at advanced ages I am very sure that competing companies will feel that they should also offer the same protection. The result will be detrimental to the insurance business in this State"; that when discussing this point with Mr. Dana in Columbia, on or about February 24, 1948, Mr. Dana said that his main reason for raising the question was because other life insurance companies customarily stop issuing policies at age 65; that when asked "why" Mr. Dana told the deponent that he supposed other companies, over a period of time, had found such business less profitable than that issued to persons under 65 years of age; and that deponent informed Mr. Dana that his Company had taken this "reason" into consideration when it decided to issue policies up to age 74; and that since actuarial tables are available to age 103, and since many people above age 65 have no insurance but still must be buried, and since the Georgia company which is owned by funeral directors has successfully and soundly insured persons up to age 90, Family Security Life Insurance Company decided to write up to age 74 initially and to higher ages at a future date if practicable.

That in February, 1948, the Insurance Department of South Carolina gave final approval to the policy contracts, cash surrender and extended insurance non-forfeiture values, guaranteed interest rate, mortality tables and [fol. 94] reserve valuation method of the Family Security Life Insurance Company.

O. Charles Honig.

Sworn to before me this 10th day of May, 1948.
Paul V. Bomar (L. S.), Notary Public for South Carolina.

Clerk's Note

See Pages 112, 113, and 114 of this transcript for Exhibits "A", "B", and "C" referred to in Plaintiffs-Appellees' Designation as being part of Affidavit of O. Charles Honig on pages 7 to 18 of Plaintiffs printed supporting affidavits and affidavits in reply.

Additional Affidavit of O. Charles Honig

State of South Carolina,
County of Spartanburg:

Before me, a duly authorized notary public, personally appeared O. Charles Honig, who being duly sworn, deposes and says that he is Executive Vice-President and Secretary of the Family Security Life Insurance Company: and that the average face amount of insurance policies in force by the Family Security Life Insurance Company is well below the average amount paid for funerals by the people of the United States, which fact is congruous with the objectives of the Family Security Life Insurance Company to help prevent overspending on funeral services by bereaved families;

That based on statistics gathered and reported by funeral directors associations in December, 1947, bereaved families spent an average of $365.00 for funeral expenses. The survey of the National Funeral Directors Association included 74,527 burials from 1941 through 1946; the survey of the National Selected Morticians included 31,690 funerals in 1946 alone. These results tally closely with those made public by the New York State Association of Funeral Directors whose survey was made by a disinterested business organization and showed that the people of that State during 1947 spent an average of $379.99 for 12,000 funerals; [fol. 95] That the average policy in force by the Family Security Life Insurance Company is $299.21; and that the average for a similar company in the State of Georgia is $227.30;

That, to the deponent's best information, knowledge and belief, it is customary practice for ordinary life insurance companies to recommend what they term a "clean-up fund" of a least $2,000.00 to provide for the insured's im-

mediate cost of dying; and that such companies propose this amount of insurance to be carried separate and apart and in addition to other life insurance to be used for other purposes.

O. Charles Honig.

Sworn to before me this 10th day of May, 1948. Paul V. Bomar, (L. S.), Notary Public of South Carolina.

AFFIDAVIT OF J. GORDON FLOYD

Before me, as duly authorized Notary Public, personally appeared J. Gordon Floyd, who being sworn, says:

That he is and has been for many years a funeral director in the city and county of Spartanburg, in the State of South Carolina. That as General Manager of The J. F. Floyd Mortuary, Inc., he has, in the past, had a great many inquiries from his clientele concerning the possibilities of their arranging, during their lifetime, for their funeral. That in a good many instances he has, in the past, and before becoming interested in the Familiy Security Life Insurance Company, entered into contracts with individuals for their own funeral and in such instances has taken deposits for the full amount of the funeral requested and ordered and held these sums on deposit in separate accounts until the death of the person involved. That these [fol. 96] numerous inquiries and the most unsatisfactory method of taking deposits and holding money until the death of the individual were some of the many factors which led up to his becoming interested in the Family Security Life Insurance Company.

That as of May 10, 1948, Family Security Life Insurance Company has a total of 92 agents and 58 of these agents are connected with funeral or undertaking establishments within the contemplation and condemnation of the Act assailed.

That since the drafting of the complaint wherein the company's progress was set forth as of April 10, 1948, the growth of the Family Security Life Insurance Company from then is as follows:

Period Covered	*No. Policyholders*	*Amt. Ins. In Force*
As of April 10	1071	$338,750.00
Week of April 12-17 (added)	413	114,750.00
As of April 17	1484	453,500.00
Week of April 19-24 (added)	392	110,250.00
As of April 24	1876	563,750.00
Week of April 19-24 (added)	392	110,250.00
As of May 1	2350	709,000.00
Week of May 3-8 (added)	474	129,375.00
As of May 8	2824	838,375.00

That for all practical purposes Section 2 of the Act assailed is the same as Section 65 of Act 232 found Page 350 of the 1947 Statutes at Large (Act 232 being the recodification of the Insurance Laws of South Carolina).

Section 65 reads as follows: "Not to Pay Death Benefits in Service—not issue policy providing for settlement of benefits in merchandise or services—Penalty.—It shall be unlawful for any insurance company to make payment or settlement of death benefits under policies written by such [fol. 97] companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rendered. Any insurance company violating the provisions of this section shall be liable to a penalty of ten (10) times the amount of such policy, certificate or other evidence of insurance to be collected in a suit by the heirs-at-law of such deceased policyholder. Any officers, agents or servants of any insurance company violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand ($1,000.00) dollars, or suffer imprisonment on the county chaingang or in the state penitentiary for a period of not more than one (1) year in the discretion of the court."

That when the insurance laws of South Carolina were rewritten open hearings were held and notice of the hearings given to the public, deponent being one of those receiving such a notice. By counsel and in person deponent attended the hearing in particular regard to Section 65 and it was through his efforts that Section 65 in the new Insurance Code was passed as now written. The first draft of insurance laws made it unlawful to "make pay-

ment on settlement of death benefits through policy written by such company in merchandise or services rendered or agreed to be rendered" but made no provision for any penalty for issuing policies providing for payment in merchandise or services rendered or to be rendered.

That because of his efforts as hereinabove indicated the deponent finds no objection to Section 2 of the Act assailed.

J. Gordon Floyd.

Sworn to and ascribed before me this tenth day of May, 1948. Ruth Crick, Notary Public of South Carolina.

[fol. 98] Affidavit of William P. Langford

Before me, a duly authorized Notary Public, William P. Lanford, who, being sworn, says he is the same as the plaintiff in the above-described caption wherein, through typographical error, his name appears as William E. Lanford.

That he, as plaintiff, is a director, stockholder, policyholder and agent of the plaintiff insurance company, and is also a member of the owning partnership of Lanford-Boyter Mortuary of Woodruff, S. C. That Lanford-Boyter Mortuary has been operating under that name and style since 1928, and before that under the name of R. D. Lanford and Company it has been successfully and continuously engaged in the mortuary business in Woodruff since 1908. That from 1935 until he went into the Army in 1941, and since his return from the Army in 1945, deponent has been managing the Lanford-Boyter Mortuary.

That in or about the month of April, 1947, plaintiff (deponent) was licensed by the State of South Carolina as agent for the Equitable Life Assurance Society of the United States of America, and in July, 1947, was again licensed by the State of South Carolina to write health and accident insurance and hospitalization insurance (providing for death benefits in accidental cases) for the North American Assurance Society of Virginia, Inc. On April 1, 1948, he was re-licensed as agent of the latter company, but did not apply for re-licensing for the former company. That deponent became an agent for the aforementioned companies before he had any knowledge or connection with

Family Security Life Insurance Company; for this latter company, he was licensed during the latter part of the year 1947-1948 and is now licensed as agent for this company for the year 1948-1949.

[fol. 99] That as agent for the Equitable Life Assurance Society and North America Assurance Society, deponent took applications, written policies were issued based thereon, and deponent accepted premiums. That devoting only a part of his time to the taking of applications for these two companies, deponent was nevertheless able to earn and did earn substantial commissions to augment his income from the mortuary business.

(S.) William P. Lanford.

Sworn to and subscribed before me this 10th day of May, 1948. Ruth Crick, Notary Public for S. C. (Seal.)

REPLY AFFIDAVIT OF L. B. HOLLAND

STATE OF SOUTH CAROLINA,
County of Spartanburg:

Personally appeared before me, L. B. Holland, who being duly sworn, deposes and says: That he is a duly licensed agent of Family Security Life Insurance Company; that since February, 1929, he has worked as an agent, special agent and supervisor for various life insurance companies in this and neighbor States; that in his entire life insurance career he has not witnessed such an attack on any one company as is being made against the Family Security Life Insurance Company by the industrial life insurance agents of South Carolina;

That during the eight weeks he has represented the above company he has encountered prospects for the insurance of and policyholders of said company, too numerable to list, whose minds have been poisoned against said company by agents of other companies;

That while working in Lando, Chester County, said agents of other companies had generally informed the [fol. 100] people of that community that Family Life Insurance Company would have to "take up" its policies; that while working in Arcadia Mills, Spartanburg County, said agents of other companies had told Family Security policy-

holders they would lose all monies paid to said company; that while working in Rock Hill, York County, said agents of other companies had made a point of telling people in that community that said company's policies were "illegal and no good".

That while working in agencies of said company at Rock Hill and Chesnee, South Carolina he experienced extreme difficulty in employing men as agents of said company because of radio and newspaper publicity pertaining to the efforts of the South Carolina General Assembly to pass legislation unfavorable to said company; and that on two occasions deponent states he had already employed men as agents only to learn the following day said agents resigned without ever having worked, because of newspaper statements simultaneously appearing with reference to "disbandment of a joint insurance-funeral business".

That the false statements made by said agents of other companies regarding Family Security Life Insurance Company, and the extensive radio and newspaper publicity given the actions against the company, have, in the deponent's opinion and to the best of his knowledge and belief, definitely injured both the rate of progress and goodwill of the aforementioned company, and that public confidence and goodwill are imperative in selling life insurance.

L. B. Holland.

Sworn to before me this 8 day of May, 1948. C. M. Daniel. (L. S.) Notary Public of South Carolina.

[fol. 101] AFFIDAVIT OF J. GORDON FLOYD IN REPLY

J. Gordon Floyd, being duly sworn, says: That he is President of The J. F. Floyd Mortuary, Inc., a concern conducting a funeral business in the city of Spartanburg and owns one-half of its capital stock. That he owns a substantial amount of stock in Family Security Life Insurance Company, is its President, is one of its agents and policyholders, and he was and is the moving spirit in the organizing and promoting of this latter company.

That he and Arthur Mackey, funeral director of Greenville, South Carolina, acquired, at a cost of $750.00, the Pee Dee Life Insurance Company and in 1941 had the name changed to Future Security Life Insurance Company;

and although they were subsequently offered as high as $20,000.00 for this company, they entered the valuation on the books at cost. In addition, by using deponent's priority as a veteran of World War II, he acquired office equipment and fixtures, reasonably worth from $12,000.00 to $15,000.00, at an actual cost of approximately $3,500.00; and, this, likewise, is carried on the books at the actual cost rather than actual value. That subsequently the name of the company was changed to Family Security Life Insurance Company, which company is the only life insurance company presently set up for and doing business through funeral directors, undertakers, mortuaries, or their agents, officers, or employees; as its agents.

That as a past president of the South Carolina Funeral Directors and Embalmers Association, which association is composed of a majority of the 130-odd funeral directors and undertakers in South Carolina (the business of undertaking and conducting mortuaries has never been regulated in South Carolina by State Statute), deponent knew personally practically all of the undertakers; and in attempt-
[fol. 102] ing to expand and promote Family Security Life Insurance Company and to secure agencies and agents and stockholders therefor and therein, he and O. Charles Honig, Vice-President of the company, called on practically all of the funeral directors and undertakers in South Carolina and offered to each and all the right to become stockholders in and agents for this company, offering them as little stock ($5.00 per share) or as much stock as they desired and not one undertaker or funeral director in South Carolina has been denied the privilege of becoming a stockholder at the actual paid-in value of the stock; nothing having been added to the cost of the stock by "watering" or for prospective earnings or otherwise; (any undertaker purchasing one share of stock being automatically entitled to the same benefits of the plan as all other stockholders); directing the attention of prospective purchasers, among other things, to Article I of the By-Laws of the company which reads as follows:

Section 1. Objectives. The objectives of the company are those of providing the people of South Carolina with a sound, economical, attractive plan and method for prepaying funeral expenses, through the mechanics of life in-

surance, and providing a permanent protection against the operation of burial rackets in the State of South Carolina.

Section 2. Method of Operation. The company shall offer its insurance through South Carolina Funeral Homes and Funeral Directors who own stock in the company and serve as its exclusive agencies and principal agents, respectively.

Section 3. Payments in Cash. All policies offered by the Company shall be on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner, and claims paid on the company's policies of insurance shall be made in cash and [fol. 103] shall permit the payee complete freedom of choice in selection of funeral home and in selection of type and cost of merchandise and services.

Section 4. Restriction on Activities. The company at no time will enter the funeral business, nor will it, at any time or under any circumstances, own or lend money on stock, real estate, equipment, paraphernalia, rolling stock, merchandise or any other assets owned or used by any funeral home in the conduct of its funeral business.

Section 5. Restriction on Stock Ownership. No one funeral home may own more than forty-nine per cent of the company's outstanding stock.

That upon offering this plan to the various funeral directors and undertakers affiant met with varying responses, among which was that of Douglas C. MacDougald, of Anderson, S. C. (who has an affidavit in the Answer of the Defendants), who, when offered stock, stated that he was afraid the plan (of Floyd's) would prevent him (Douglas C. MacDougald) from selling funerals in as high a price range as he was presently obtaining. For this and other reasons he declined to take stock in the company.

Another reason, assigned by others when offered stock, including Richard H. Wood, of Greer, South Carolina (who also made an affidavit in the Defendant's answer) was that it would make for more competition among the undertakers because it would permit a newcomer in the undertaking business to write a sufficient number of policies to enable him to stay in business if those insured through him as agent were buried through the facilities of the newcomer. Mr. Wood also did not like the plan be-

cause he did not want to be "bothered" with insurance business and the combination of the insurance with the funeral business did not appeal to his aesthetic nature. He assigned these and other reasons for not desiring to partici-
[fol. 104] pate. (Mr. Wood owns and operates the only white undertaking establishment in Greer, South Carolina, and has the advantages which being the sole undertaker in that territory automatically assures.)

That Robert Y. Wolfe, an undertaker of Fort Mill, S. C. (who also made an affidavit for the Defendants), and other funeral directors have stated to deponent, when offered stock, that if the writing of insurance through undertakers and mortuaries were permitted under South Carolina law they would write policies and Wolfe caused a prominent advertisement (to be handed to the Court as Exhibit "A") to this effect to be published in a newspaper in his county. Deponent believes that most of the undertakers in South Carolina would participate as agents and stockholders in Family Security Life Insurance Company if it were not for the present litigation or if it were not for the Act assailed.

That in spite of the foregoing reasons assigned and those other reasons which reflected the inert laziness of some funeral directors and their unwillingness to offer this additional service and advantage to the public, deponent nevertheless sold stock to the following South Carolina funeral directors, undertaking establishments, or their agents or employees. The establishments became agencies for the insurance company and some of their employees became agents. These stockholders are as follows:

STOCKHOLDERS OF FAMILY SECURITY LIFE INSURANCE COMPANY FUNERAL DIRECTORS AND EMPLOYEES

The J. F. Floyd Mortuary, Inc., Spartanburg, S. C.
Arthur H. Mackey, Greenville, S. C.
J. G. Floyd, Spartanburg, S. C.
[fol. 105] The Edgar-Brown-Bailey Funeral Home, Inc., Union, S. C.
Bass Funeral Home, Rock Hill, S. C.
The Kennedy Mortuary, Inc., Laurens, S. C.
Lanford-Boyter Mortuary, Woodruff, S. C.
Cannon Funeral Home, Fountain Inn, S. C.
Hardwick Funeral Home, Loris, S. C.

Goldfinch's, Inc., Conway, S. C.
Floyd Funeral Home, Olanta, S. C.
Cox Funeral Home, Mullins, S. C.
Meares Funeral Home, Mullins, S. C.
Whitner Undertaking Co., Inc., Bennettsville, S. C.
Hursey Funeral Home, Chesterfield, S. C.
John McAlister, Inc., Charleston, S. C.
Blyth's Service, Greenwood, S. C.
Holland Funeral Home, Inc., Lancaster, S. C.
Mayer Funeral Home, Georgetown, S. C.
Fred Parker Funeral Home, Walterboro, S. C.
Waters Funeral Home, Florence, S. C.
Redfearn Funeral Home, Cheraw, S. C.
Cauthen's, Inc., Lancaster, S. C.
York Funeral Home, York, S. C.
Swan F. Rouquie, Spartanburg, S. C.
Bethea Funeral Home, Dillon, S. C.
Williams Funeral Home, Inc., Florence, S. C.
Oulla Funeral Home, Inc., Dillon, S. C.
Tolly W. Petty Funeral Home, Landrum, S. C.
Smith Brothers Funeral Home, Marion, S. C.

That the South Carolina Funeral Directors and Embalmers Association, as an organization, has taken no action against deponent's plan and deponent is informed, believes and alleges that had every undertaker, funeral director and embalmer in South Carolina, without exception, [fol. 106] combined against him, they could not have brought sufficient political force or pressure to bear to have succeeded in passing the Act.

Instead of acting alone in exerting influence on the legislature of South Carolina, in passing the Act under attack, those undertakers not interested in deponent's plan and not being willing to give to the public the benefits thereof, have either knowingly or unwittingly allowed themselves to become the "Front Men" or "Stooges" for the Industrial Insurance Companies of South Carolina. That to deponent's knowledge, Mr. Albert Orgain, President of the South Carolina Underwriter's Association, while the legislature was in session and the Act pending before it, went over the entire State of South Carolina organizing principally the industrial insurance agents to bring pressure to bear for its passage.

Mr. Orgain appeared before the committee in the House

Note:

All Pages here are from preceding card.

— Cameraman

EXHIBIT "A"

INCORPORATED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA

Family Security
LIFE INSURANCE COMPANY

HOME OFFICE • SPARTANBURG, SOUTH CAROLINA

(HEREINAFTER CALLED THE COMPANY)

AGREES TO PAY

THE AMOUNT OF INSURANCE specified in the Schedule and Table below, less any indebtedness to the Company, to the Beneficiary in accordance with the provisions of this Policy upon receipt of due proof of the death of the Insured whose name appears hereon, **PLUS** an amount equal to such monthly premiums, if any, paid in advance beyond the month in which the death of the Insured shall occur.

SCHEDULE REFERRED TO

NAME OF INSURED	NAME OF BENEFICIARY	RELATIONSHIP

POLICY NO.	AGE	PREMIUM C If Below Age 4 see Table Below	MAXIMUM AMOUNT INSURANCE $	DATE OF POLICY Mo.	Day	Year

TABLE OF DEATH BENEFITS ON AGES BELOW 4 YEARS NEXT BIRTHDAY AT DATE OF POLICY

(This table is based on "Maximum Amount of Insurance" of $500.00. For "Maximum Amount Insurance" of $125.00, $250.00, and $750.00, the amounts in the following table are to be changed proportionately.)

In the event the Insured is less than 4 years of age next birthday at date hereof, the amount shown below for age of Insured is the amount payable, provided death occurs after Policy has been in force for the following periods:

Age Next Birthday When Insured	PERIOD OF TIME POLICY HAS BEEN IN FORCE				
	Less Than 1 Year	More Than 1 Year –	More Than 2 Years	More Than 3 Years	More Than 4 Years
1	$100	$200	$300	$400	$500
2	200	300	400	500	When the amount of
3	300	400	500		the Insurance, according to this
4	400	500			table, reaches the highest amount stated for an age,
it will continue at that amount during the continuance of this Policy, according to the terms hereof.					

CONSIDERATION. This Policy is issued in consideration of the statements made in the application for this Policy and the payment of the first monthly premium shown above on or before the Date of Policy, and the payment of a like amount on the same day of each month thereafter during the continuance of this Policy until twenty (20) full years' premiums shall have been paid, or until the prior death of the Insured.

CONTRACT. This Policy shall take effect on the date of issue provided that the Insured is then alive and in sound health. This Policy and the application therefor constitute the entire agreement between the Company and the Insured. No agent shall have the power or authority to change, alter or waive any of the terms or conditions, or any portion of this Policy. The terms of this Policy can not be changed nor its conditions waived except by written agreement signed by the President or Secretary of the Company.

INCONTESTABILITY. The Company shall have no defense against a claim under this Policy except for fraud or non-payment of premiums. If the age of the Insured has been misstated, the amount payable shall be such as the premium paid would have purchased at the correct age.

PAYMENT OF PREMIUMS. All premiums are payable in advance at the Home Office of the Company but may be accepted elsewhere by a duly authorized agent of the Company.

GRACE PERIOD. A grace period of thirty days will be allowed for the payment of any premium after the first, during which time this Policy shall continue in force. If death of the Insured occurs during the period of grace, any premium then due or in default shall be deducted from the amount payable hereunder,

REINSTATEMENT. In the event this Policy should lapse it may be reinstated by furnishing the Company evidence of insurability satisfactory to the Company and payment of all premiums in arrears, unless the Extended Insurance has expired or the Cash Surrender Value has been

LIFE INSURANCE COMPANY

HOME OFFICE • SPARTANBURG, SOUTH CAROLINA

(HEREINAFTER CALLED THE COMPANY)

AGREES TO PAY

THE AMOUNT OF INSURANCE specified in the Schedule and Table below, less any indebtedness to the Company, to the Beneficiary in accordance with the provisions of this Policy upon receipt of due proof of the death of the Insured whose name appears hereon, PLUS an amount equal to such monthly premiums, if any, paid in advance beyond the month in which the death of the Insured shall occur.

SCHEDULE REFERRED TO

NAME OF INSURED	NAME OF BENEFICIARY	RELATIONSHIP

POLICY NO.	AGE	PREMIUM C If Below Age 4 see Table Below	MAXIMUM AMOUNT INSURANCE $	DATE OF POLICY Mo.	Day	Year

TABLE OF DEATH BENEFITS ON AGES BELOW 4 YEARS NEXT BIRTHDAY AT DATE OF POLICY

(This table is based on "Maximum Amount of Insurance" of $500.00. For "Maximum Amount Insurance" of $125.00, $250.00, and $750.00, the amounts in the following table are to be changed proportionately.)

In the event the Insured is less than 4 years of age next birthday at date hereof, the amount shown below for age of Insured is the amount payable, provided death occurs after Policy has been in force for the following periods:

Age Next Birthday When Insured	PERIOD OF TIME POLICY HAS BEEN IN FORCE				
	Less Than 1 Year	More Than 1 Year	More Than 2 Years	More Than 3 Years	More Than 4 Years
1	$100	$200	$300	$400	$500
2	200	300	400	500	When the amount of
3	300	400	500		the Insurance, according to this
4	400	500			table, reaches the highest amount stated for an age,
it will continue at that amount during the continuance of this Policy, according to the terms hereof.					

CONSIDERATION. This Policy is issued in consideration of the statements made in the application for this Policy and the payment of the first monthly premium shown above on or before the Date of Policy, and the payment of a like amount on the same day of each month thereafter during the continuance of this Policy until twenty (20) full years' premiums shall have been paid, or until the prior death of the Insured.

CONTRACT. This Policy shall take effect on the date of issue provided that the Insured is then alive and in sound health. This Policy and the application therefor constitute the entire agreement between the Company and the Insured. No agent shall have the power or authority to change, alter or waive any of the terms or conditions, or any portion of this Policy. The terms of this Policy can not be changed nor its conditions waived except by written agreement signed by the President or Secretary of the Company.

INCONTESTABILITY. The Company shall have no defense against a claim under this Policy except for fraud or non-payment of premiums. If the age of the Insured has been misstated, the amount payable shall be such as the premium paid would have purchased at the correct age.

PAYMENT OF PREMIUMS. All premiums are payable in advance at the Home Office of the Company but may be accepted elsewhere by a duly authorized agent of the Company.

GRACE PERIOD. A grace period of thirty days will be allowed for the payment of any premium after the first, during which time this Policy shall continue in force. If death of the Insured occurs during the period of grace, any premium then due or in default shall be deducted from the amount payable hereunder.

REINSTATEMENT. In the event this Policy should lapse it may be reinstated by furnishing the Company evidence of insurability satisfactory to the Company and payment of all premiums in arrears, unless the Extended Insurance has expired or the Cash Surrender Value has been paid.

BENEFICIARY CHANGE. By written notice to the Company the Insured may from time to time name a new Beneficiary, subject to evidence of insurable interest satisfactory to the Company, but no such change shall be effective until endorsed on this Policy by the Company. If the Beneficiary shall die before the Insured, the proceeds of this Policy shall be payable to the Insured's estate, or as provided in the Facility of Payment Clause herein.

FACILITY OF PAYMENT. The Company may make any payment provided for in this Policy to husband or wife, or any relative by blood, or lawful beneficiary, or connection of the Insured by marriage, or to any other person who may appear to be equitably entitled to such payment by reason of having incurred expense on behalf of the Insured. Production by the Company of a receipt signed by any of said persons, or of other sufficient proof of such payment to any of them, shall be conclusive evidence that such benefits have been paid to the persons entitled thereto, and that all claims under this Policy have been satisfied.

This Policy is subject to the terms and the conditions on this and the reverse side hereof.

IN WITNESS WHEREOF, the FAMILY SECURITY LIFE INSURANCE COMPANY has, by its President and Vice-President, executed and attested this Policy at Spartanburg, South Carolina, on the date shown in the Schedule above.

FAMILY SECURITY LIFE INSURANCE CO. Seal

SPECIMEN

Charles Honig
Vice-President

John G. Edgar
President

TWENTY YEAR PAYMENT LIFE INSURANCE
Premiums Payable for 20 Years, Insurance for Life

Form 120

TERMS, CONDITIONS AND PROVISIONS—Continued

SUICIDE. If the Insured shall die within two years from date of issue of this Policy by his own act, whether sane or insane, the liability of the Company shall be limited to an amount equal to the premiums actually paid on this Policy.

PROOFS OF DEATH. Proofs of death under this Policy shall be presented to the Company upon blanks to be furnished by the Company and shall contain answers to each question propounded to the claimant, physician or other persons.

NON-FORFEITURE VALUES. Automatic Extended Insurance—In the event this Policy lapses for non-payment of premiums after premiums have been paid for three full years or more, the Company will automatically continue the amount of insurance granted herein for the number of months specified in the Table of Extended Term Insurance, according to the age of the Insured at issue and the number of complete years premiums have been paid. The term of Extended Insurance shall commence on the due date of the first premium in default.

Cash Surrender Value—After this Policy has been in force and the premiums paid hereon for five full years, upon written request by the Insured to the Company and surrender of this Policy together with all evidence of payment of premiums hereon, the Company will pay a cash surrender value as shown in the Table of Cash Surrender Values, less any indebtedness to the Company. Such written request must be made within three months of the due date of the first premium in default.

RESERVES. The basis of reserves for this Policy is the 1941 Standard Industrial Mortality Table, Commissioners' Valuation Method, with interest at 3% per year.

20 PAYMENT LIFE PLAN

Premiums Payable for 20 Years

Insurance for Life

SPECIMEN

Family Security LIFE INSURANCE COMPANY

HOME OFFICE: PARTENHEIM, SOUTH CAROLINA

Owned And Operated By

South Carolina Funeral Directors

for the People of South Carolina

"Remember . . .

Your first duty is family security."

NOTICE TO POLICYHOLDERS

This Company is always glad to pay just claims, and will pay without the influence of anyone in collecting. Deliver the Policy only to the Company's agent. He will assist you without any expense to you.

REGISTER OF CHANGE OF BENEFICIARY

Note: No change of Beneficiary shall take effect unless indorsed on this Certificate by an Executive Officer of the Company at the Home Office.

Date of Request	Beneficiary	Indorsed By

TABLES OF GUARANTEED VALUES PER $500 OF INSURANCE

The Cash Surrender Values in these Tables are based on a Policy for $500, therefore if this Policy be for a hese Tables are based on a Policy for $500, therefore if this Policy be for a greater or less amount the said values will be proportionately adjusted. For example, if the amount of this Policy at date of lapse is $250 the am . For example, if the amount of this Policy at date of lapse is $250 the amounts of Cash Surrender shall be one-half the amounts shown.

TABLES OF GUARANTEED VALUES PER $500.00 INSURANCE
Extended Term Insurance

Number of Months of Extended Term Insurance

Age at Issue	After 3 Years	After 4 Years	After 5 Years	After 6 Years	After 7 Years	After 8 Years	After 9 Years	After 10 Years	After 11 Years	After 12 Years	After 13 Years	After 14 Years	After 15 Years	After 16 Years	After 17 Years	After 18 Years	After 19 Years	After 20 Years	Age at Issue
1	26	81	149	203	255	307	354	396	428	456	481	504	524	544	562	581	603		1
2	34	96	158	209	260	310	355	393	424	451	475	497	517	535	553	572	594		2
3	36	102	159	210	260	309	352	388	418	444	468	489	508	526	544	563	584		3
4	41	107	161	210	260	307	349	383	412	437	460	480	500	517	535	553	574		4
5	47	111	162	211	260	306	345	378	406	431	453	473	491	508	525	544	564		5
6	55	115	164	212	261	305	342	374	401	424	446	465	483	500	516	534	555		6
7	62	117	165	213	260	302	339	369	395	418	438	457	474	491	507	525	545		7
8	65	118	165	212	258	300	334	363	388	410	431	449	466	482	498	515	535		8
9	67	117	164	211	256	296	329	357	382	403	423	440	457	472	488	505	525		9
10	68	116	163	210	254	292	324	351	375	396	415	432	448	463	479	495	515	OF POLICY	10
11	68	115	161	207	250	287	318	344	367	388	406	423	439	454	469	486	506		11
12	67	113	159	205	247	283	312	338	360	380	398	414	430	444	459	476	496		12
13	65	111	157	202	243	277	306	331	352	372	389	405	420	435	449	466	486		13
14	63	109	155	199	239	272	300	324	345	364	381	396	411	425	440	456	476		14
15	62	107	153	196	235	267	294	317	337	356	372	387	402	415	430	446	466		15
16	60	106	151	193	230	261	287	310	329	347	364	378	392	406	420	436	456		16
17	59	104	149	191	226	256	281	303	322	339	355	369	383	396	410	426	446		17
18	59	104	148	188	222	250	274	296	314	331	346	360	374	387	401	417	436		18
19	58	103	146	185	218	245	268	288	307	323	338	352	364	377	391	407	426		19
20	58	102	145	182	213	239	262	281	299	315	329	343	355	368	381	397	416	AMOUNT	20
21	58	102	143	179	209	234	255	274	291	307	321	334	346	358	372	387	406		21
22	58	102	141	176	204	228	249	267	284	299	312	325	337	349	362	378	396		22
23	59	101	139	172	200	223	243	260	276	291	304	316	328	340	353	368	387		23
24	59	101	137	169	195	217	236	253	269	283	296	307	319	331	344	358	377		24
25	59	100	135	165	190	211	230	246	261	275	287	299	310	321	334	349	368		25
26	60	99	132	161	185	205	223	239	254	267	279	290	301	312	325	340	358		26
27	59	97	130	157	180	199	217	232	246	259	270	281	292	303	316	330	349		27
28	59	96	127	152	174	193	210	225	239	251	262	273	283	294	306	321	339	FOR FACE	28
29	59	94	123	148	169	187	203	218	231	243	254	264	274	285	297	312	330		29
30	58	91	120	143	163	181	197	211	224	235	245	255	265	276	288	303	321		30
31	57	89	116	138	158	175	190	204	216	227	237	247	257	267	279	294	312		31
32	56	86	112	134	152	169	184	197	209	219	229	238	248	259	271	285	303		32
33	54	84	108	129	147	163	177	190	201	211	221	230	240	250	262	276	294		33
34	53	81	104	124	141	157	170	183	194	204	213	222	231	241	253	267	285		34
35	51	78	100	119	136	151	164	176	186	196	205	214	223	233	244	258	276	PAID-UP	35
36	49	75	96	114	130	145	158	169	179	188	197	206	215	224	236	249	267		36
37	47	71	92	109	125	139	151	162	172	181	189	198	206	216	227	240	258		37
38	45	68	88	105	120	133	145	156	165	173	182	190	198	208	219	232	249		38
39	43	65	84	100	115	127	139	149	158	166	174	182	190	200	210	224	241		39
40	41	62	80	96	110	122	133	142	151	159	166	174	183	192	202	215	232		40
41	39	59	76	91	105	116	127	136	144	152	159	167	175	184	194	207	224		41
42	37	56	73	87	100	111	121	130	138	145	152	159	167	176	186	200	216		42
43	35	53	69	83	95	106	115	124	131	138	146	152	160	169	178	191	208		43
44	33	51	66	79	91	101	110	118	125	131	138	145	153	161	171	183	200		44
45	32	48	63	75	86	96	104	112	119	125	132	139	146	154	164	175	192	FULLY	45
46	30	46	60	72	82	91	99	106	113	119	125	132	139	147	156	168	184		46
47	29	44	57	68	78	87	94	101	107	113	119	126	132	140	149	161	177		47
48	28	42	54	65	74	82	89	95	101	107	113	119	126	134	142	153	170		48
49	26	40	52	62	70	78	84	90	96	102	107	114	120	127	136	146	162		49
50	25	38	49	58	66	73	80	85	91	96	102	108	114	121	129	140	155		50
51	24	36	46	55	63	69	75	81	86	91	97	102	108	115	123	133	148		51
52	23	34	44	52	59	65	71	76	81	87	92	97	102	109	116	126	140		52
53	22	33	42	49	56	62	67	72	77	82		92	97	103	110	119	134		53
54	21	31	39	46	52	58	63	68	73	77		86	91	97	104	113	127		54
55	20	29	37	43	49	55	59	64	69	73		81	86	91	98	107	120		55

TABLES OF GUARANT $500.00 INSURANCE
Ce

nsurance

Age at Issue	After 5 Years	After 6 Years	After 7 Years	After 8 Years	After 9 Years	After 10 Years	After 15 Years	After 16 Years	After 17 Years	After 18 Years	After 19 Years	After 20 Years	Age at Issue
1	$19	$26	$ 34	$ 42	$ 50	$ 59	$	524	544	562	581	603	1
2	20	27	35	44	52	61		517	535	553	572	594	2
3	20	28	36	45	54	63		508	526	544	563	584	3
4	21	29	38	46	55	65		500	517	535	553	574	4
5	22	30	39	48	57	67		491	508	525	544	564	5
6	23	32	41	50	59	69		483	500	516	534	555	6
7	24	33	42	52	61	71		474	491	507	525	545	7
8	26	35	44	53	63	73		466	482	498	515	535	8
9	27	36	45	55	65	75		457	472	488	505	525	9
10	28	37	46	56	66	76	OF POLICY	448	463	479	495	515	10
11	29	38	48	58	68	78		439	454	469	486	506	11
12	29	39	49	59	69	80		430	444	459	476	496	12
13	30	40	50	60	70	81		420	435	449	466	486	13
14	31	41	51	61	72	83		411	425	440	456	476	14
15	31	41	52	62	73	85		402	415	430	446	466	15
16	32	42	53	64	75	86		392	406	420	436	456	16
17	33	43	54	65	76	88		383	396	410	426	446	17
18	33	44	55	66	78	90		374	387	401	417	436	18
19	34	45	56	68	80	92		364	377	391	407	426	19
20	35	46	57	69	81	94	AMOUNT	355	368	381	397	416	20
21	36	47	59	71	83	96		346	358	372	387	406	21
22	36	48	60	72	85	98		337	349	362	378	396	22
23	37	49	62	74	87	101		328	340	353	368	387	23
24	38	51	63	76	89	103		319	331	344	358	377	24
25	39	52	65	78	91	105		310	321	334	349	368	25
26	41	53	66	80	93	108		301	312	325	340	358	26
27	42	55	68	82	96	110		292	303	316	330	349	27
28	43	56	70	84	98	113		283	294	306	321	339	28
29	44	57	71	85	100	115	FOR FACE	274	285	297	312	330	29
30	45	58	73	87	102	117		265	276	288	303	321	30
31	46	60	75	89	104	120		257	267	279	294	312	31
32	47	62	76	91	107	122		248	259	271	285	303	32
33	48	63	78	93	109	125		240	250	262	276	294	33
34	49	64	79	95	111	127		231	241	253	267	285	34
35	51	66	81	97	113	129		223	233	244	258	276	35
36	52	67	83	99	115	132		215	224	236	249	267	36
37	53	68	84	100	117	134		206	216	227	240	258	37
38	54	69	85	102	119	136		198	208	219	232	249	38
39	55	71	87	103	120	138	PAID-UP	190	200	210	224	241	39
40	55	72	88	105	122	140		183	192	202	215	232	40
41	56	73	89	106	124	142		175	184	194	207	224	41
42	57	74	91	108	126	144		167	176	186	200	216	42
43	58	75	92	109	127	146		160	169	178	191	208	43
44	59	76	93	111	129	147		153	161	171	183	200	44
45	60	77	94	112	131	149		146	154	164	175	192	45
46	60	78	96	114	132	151	FULLY	139	147	156	168	184	46
47	61	79	97	115	134	153		132	140	149	161	177	47
48	62	80	98	117	136	155		126	134	142	153	170	48
49	64	82	100	119	138	157		120	127	136	146	162	49
50	65	83	101	120	139	159		114	121	129	140	155	50
51	66	84	103	122	141	160		108	115	123	133	148	51
52	67	85	104	123	142	162		102	109	116	126	140	52
5	68	87	106	125	144	163		97	103	110	119	134	53
5	9	88	107	126	145	164		91	97	104	113	127	54
55	70	89	108	127	146	165		86	91	98	107	120	55

TABLES OF GUARANTEED VALUES PER $500.00 INSURANCE
Cash Surrender Value

Age at Issue	After 5 Years	After 6 Years	After 7 Years	After 8 Years	After 9 Years	After 10 Years	After 11 Years	After 12 Years	After 13 Years	After 14 Years	After 15 Years	After 16 Years	After 17 Years	After 18 Years	After 19 Years	After 20 Years	Age at Issue
1	$19	$26	$ 34	$ 42	$ 50	$ 59	$ 68	$ 77	$ 87	$ 97	$107	$117	$128	$139	$150	$162	1
2	20	27	35	44	52	61	70	80	90	100	110	120	131	142	153	165	2
3	20	28	36	45	54	63	72	82	92	102	112	123	134	145	157	169	3
4	21	29	38	46	55	65	74	84	94	105	115	126	137	148	160	172	4
5	22	30	39	48	57	67	76	86	97	107	118	129	140	152	164	176	5
6	23	32	41	50	59	69	79	89	99	110	121	132	143	155	167	180	6
7	24	33	42	52	61	71	81	91	102	112	123	135	146	158	171	184	7
8	26	35	44	53	63	73	83	93	104	115	126	138	150	162	174	188	8
9	27	36	45	55	65	75	85	95	106	117	129	141	153	165	178	192	9
10	28	37	46	56	66	76	87	98	109	120	132	144	156	169	182	196	10
11	29	38	48	58	68	78	89	100	111	122	134	147	159	173	186	200	11
12	29	39	49	59	69	80	91	102	113	125	137	150	163	176	190	204	12
13	30	40	50	60	70	81	92	104	116	128	140	153	166	180	194	209	13
14	31	41	51	61	72	83	94	106	118	130	143	156	170	184	198	213	14
15	31	41	52	62	73	85	96	108	120	133	146	160	174	188	203	218	15
16	32	42	53	64	75	86	98	110	123	136	149	163	177	192	207	223	16
17	33	43	54	65	76	88	100	113	126	139	153	167	181	196	212	228	17
18	33	44	55	66	78	90	102	115	128	142	156	170	185	200	216	232	18
19	34	45	56	68	80	92	105	118	131	145	159	174	189	205	221	237	19
20	35	46	57	69	81	94	107	120	134	148	163	178	193	209	225	242	20
21	36	47	59	71	83	96	109	123	137	151	166	182	197	213	230	257	21
22	36	48	60	72	85	98	112	126	140	155	170	185	201	218	235	253	22
23	37	49	62	74	87	101	114	128	143	158	173	189	206	223	240	258	23
24	38	51	63	76	89	103	117	131	146	161	177	193	210	227	245	263	24
25	39	52	65	78	91	105	120	134	149	165	181	197	214	232	250	268	25
26	41	53	66	80	93	108	122	137	153	168	185	201	219	236	255	273	26
27	42	55	68	82	96	110	125	140	156	172	188	205	223	241	260	279	27
28	43	56	70	84	98	113	128	143	159	175	192	210	227	246	264	284	28
29	44	57	71	85	100	115	130	146	162	179	196	214	232	250	269	289	29
30	45	58	73	87	102	117	133	149	166	182	200	218	236	254	274	295	30
31	46	60	75	89	104	120	136	152	169	186	204	222	240	259	279	300	31
32	47	62	76	91	107	122	138	155	172	189	207	226	245	264	284	305	32
33	48	63	78	93	109	125	141	158	175	193	211	230	249	269	289	311	33
34	49	64	79	95	111	127	144	161	178	196	214	233	253	273	294	316	34
35	51	66	81	97	113	129	146	163	181	199	218	237	257	278	299	321	35
36	52	67	83	99	115	132	149	166	184	203	221	241	261	282	304	327	36
37	53	68	84	100	117	134	151	169	187	206	225	245	265	287	309	332	37
38	54	69	85	102	119	136	153	171	190	209	228	249	269	291	314	337	38
39	55	71	87	103	120	138	156	174	193	212	232	252	273	296	318	342	39
40	55	72	88	105	122	140	158	176	195	215	235	256	277	300	323	348	40
41	56	73	89	106	124	142	160	179	198	218	238	259	281	304	328	353	41
42	57	74	91	108	126	144	162	181	201	221	241	263	285	308	332	358	42
43	58	75	92	109	127	146	164	183	203	224	245	266	289	312	337	363	43
44	59	76	93	111	129	147	166	186	206	226	248	270	292	316	341	368	44
45	60	77	94	112	131	149	169	188	208	229	251	273	296	320	345	372	45
46	60	78	96	114	132	151	171	190	211	232	253	276	299	324	349	377	46
47	61	79	97	115	134	153	173	193	213	234	256	279	302	327	353	381	47
48	62	80	98	117	136	155	175	195	215	237	259	281	305	330	357	386	48
49	64	82	100	119	138	157	177	197	218	239	261	284	308	333	361	390	49
50	65	83	101	120	139	159	179	199	220	241	263	286	311	336	364	395	50
51	66	84	103	122	141	160	180	201	221	243	265	288	313	339	368	399	51
52	67	85	104	123	142	162	182	202	223	244	267	290	315	342	371	403	52
5	68	87	106	125	144	163	183	203	224	246	268	292	317	345	375	407	53
5	9	88	107	126	145	164	184	204	225	247	269	294	319	347	378	411	54
55	70	89	108	127	146	165	185	205	226	248	271	295	321	350	381	415	55

TERMS, CONDITIONS AND PROVISIONS—Continued

SUICIDE. If the Insured shall die within two years from date of issue of this Policy by his own act, whether sane or insane, the liability of the Company shall be limited to an amount equal to the premiums actually paid on this Policy.

PROOFS OF DEATH. Proofs of death under this Policy shall be presented to the Company upon blanks to be furnished by the Company and shall contain answers to each question propounded to the claimant, physician or other persons.

NON-FORFEITURE VALUES. Automatic Extended Insurance—In the event this Policy lapses for non-payment of premiums after premiums have been paid for three full years or more, the Company will automatically continue the amount of insurance granted herein for the number of months specified in the Table of Extended Term Insurance, according to the age of the Insured at issue and the number of complete years premiums have been paid. The term of Extended Insurance shall commence on the due date of the first premium in default.

Cash Surrender Value—After this Policy has been in force and the premiums paid hereon for five full years, upon written request by the Insured to the Company and surrender of this Policy together with all evidence of payment of premiums hereon, the Company will pay a cash surrender value as shown in the Table of Cash Surrender Values, less any indebtedness to the Company. Such written request must be made within three months of the due date of the first premium in default.

RESERVES. The basis of reserves for this Policy is the 1941 Standard Industrial Mortality Table, Commissioners' Valuation Method, with interest at 3% per year.

WHOLE LIFE PLAN

Premiums Payable During Life

SPECIMEN

Family Security LIFE INSURANCE COMPANY

HOME OFFICE: SPARTANBURG, SOUTH CAROLINA

Owned And Operated By

South Carolina Funeral Directors

for the People of South Carolina

"Remember . . .

Your first duty is family security."

NOTICE TO POLICYHOLDERS

This Company is always glad to pay just claims, and will pay without the influence of anyone in collecting. Deliver the Policy only to the Company's agent. He will assist you without any expense to you.

REGISTER OF CHANGE OF BENEFICIARY

Note: No change of Beneficiary shall take effect unless indorsed on this Certificate by an Executive Officer of the Company at the Home Office.

Date of Request	Beneficiary	Indorsed By

INCORPORATED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA

Family Security
LIFE INSURANCE COMPANY

YOUR FIRST DUTY IS FAMILY SECURITY

HOME OFFICE • SPARTANBURG, SOUTH CAROLINA

(HEREINAFTER CALLED THE COMPANY)

AGREES TO PAY

THE AMOUNT OF INSURANCE specified in the Schedule and Table below, less any indebtedness to the Company, to the Beneficiary in accordance with the provisions of this Policy upon receipt of due proof of the death of the Insured whose name appears hereon, **PLUS** an amount equal to such monthly premiums, if any, paid in advance beyond the month in which the death of the Insured shall occur.

SCHEDULE REFERRED TO

NAME OF INSURED	NAME OF BENEFICIARY	RELATIONSHIP

POLICY NO.	AGE	PREMIUM C	MAXIMUM AMOUNT INSURANCE $ If Below Age 4 see Table Below	DATE OF POLICY Mo.	Day	Year

TABLE OF DEATH BENEFITS ON AGES BELOW 4 YEARS NEXT BIRTHDAY AT DATE OF POLICY

(This table is based on "Maximum Amount of Insurance" of $500.00. For "Maximum Amount Insurance" of $125.00, $250.00, and $750.00, the amounts in the following table are to be changed proportionately.)

In the event the Insured is less than 4 years of age next birthday at date hereof, the amount shown below for age of Insured is the amount payable, provided death occurs after Policy has been in force for the following periods:

Age Next Birthday When Insured	PERIOD OF TIME POLICY HAS BEEN IN FORCE				
	Less Than 1 Year	More Than 1 Year	More Than 2 Years	More Than 3 Years	More Than 4 Years
1	$100	$200	$300	$400	$500
2	200	300	400	500	When the amount of
3	300	400	500	the Insurance, according to this	
4	400	500	table, reaches the highest amount stated for an age,		
it will continue at that amount during the continuance of this Policy, according to the terms hereof.					

CONSIDERATION. This Policy is issued in consideration of the statements made in the application for this Policy and the payment of the first monthly premium shown above on or before the Date of Policy, and the payment of a like amount on the same day of each month thereafter during the life of the Insured.

CONTRACT. This Policy shall take effect on the date of issue provided that the Insured is then alive and in sound health. This Policy and the application therefor constitute the entire agreement between the Company and the Insured. No agent shall have the power or authority to change, alter or waive any of the terms or conditions, or any portion of this Policy. The terms of this Policy can not be changed nor its conditions waived except by written agreement signed by the President or Secretary of the Company.

INCONTESTABILITY. The Company shall have no defense against a claim under this Policy except for fraud or non-payment of premiums. If the age of the Insured has been misstated, the amount payable shall be such as the premium paid would have purchased at the correct age.

PAYMENT OF PREMIUMS. All premiums are payable in advance at the Home Office of the Company but may be accepted elsewhere by a duly authorized agent of the Company.

GRACE PERIOD. A grace period of thirty days will be allowed for the payment of any premium after the first, during which time this Policy shall continue in force. If death of the Insured occurs during the period of grace, any premium then due or in default shall be deducted from the amount payable hereunder.

REINSTATEMENT. In the event this Policy should lapse it may be reinstated by furnishing the Company evidence of insurability satisfactory to the Company and payment of all premiums in arrears, unless the Extended Insurance has expired or the Cash Surrender Value has been paid.

BENEFICIARY CHANGE. By written notice to the Company the Insured may from time to time name a new Beneficiary, subject to evidence of insurable interest satisfactory to the Company, but no such change shall be effective until endorsed on this Policy by the Company. If the Beneficiary shall die before the Insured, the proceeds of this Policy shall be payable to the Insured's estate, or as provided in the Facility of Payment Clause herein.

FACILITY OF PAYMENT. The Company may make any payment provided for in this Policy to husband or wife, or any relative by blood, or lawful beneficiary, or connection of the Insured by marriage, or to any other person who may appear to be equitably entitled to such payment by reason of having incurred expense on behalf of the Insured. Production by the Company of a receipt signed by any of said persons, or of other sufficient proof of such payment to any of them, shall be conclusive evidence that such benefits have been paid to the persons entitled thereto, and that all claims under this Policy have been satisfied.

This Policy is subject to the terms and the conditions on this and the reverse side hereof.

IN WITNESS WHEREOF, the FAMILY SECURITY LIFE INSURANCE COMPANY has, by its President and Vice-President, executed and attested this Policy at Spartanburg, South Carolina, on the date shown in the Schedule above.

FAMILY SECURITY LIFE INSURANCE CO. Seal

SPECIMEN

Charles Honig
Vice-President

J. E. Sloan
President

WHOLE LIFE INSURANCE
Premium Payable During Life

Form 100

HOME OFFICE • SPARTANBURG, SOUTH CAROLINA

(HEREINAFTER CALLED THE COMPANY)

AGREES TO PAY

THE AMOUNT OF INSURANCE specified in the Schedule and Table below, less any indebtedness to the Company, to the Beneficiary in accordance with the provisions of this Policy upon receipt of due proof of the death of the Insured whose name appears hereon, **PLUS** an amount equal to such monthly premiums, if any, paid in advance beyond the month in which the death of the Insured shall occur.

SCHEDULE REFERRED TO

NAME OF INSURED	NAME OF BENEFICIARY	RELATIONSHIP

POLICY NO.	AGE	PREMIUM C	MAXIMUM AMOUNT INSURANCE $ If Below Age 4 see Table Below	DATE OF POLICY Mo.	Day	Year

TABLE OF DEATH BENEFITS ON AGES BELOW 4 YEARS NEXT BIRTHDAY AT DATE OF POLICY

(This table is based on "Maximum Amount of Insurance" of $500.00. For "Maximum Amount Insurance" of $125.00, $250.00, and $750.00, the amounts in the following table are to be changed proportionately.)

In the event the Insured is less than 4 years of age next birthday at date hereof, the amount shown below for age of Insured is the amount payable, provided death occurs after Policy has been in force for the following periods:

Age Next Birthday When Insured	PERIOD OF TIME POLICY HAS BEEN IN FORCE				
	Less Than 1 Year	More Than 1 Year	More Than 2 Years	More Than 3 Years	More Than 4 Years
1	$100	$200	$300	$400	$500
2	200	300	400	500	When the amount of
3	300	400	500	the Insurance, according to this	
4	400	500	table, reaches the highest amount stated for an age,		
it will continue at that amount during the continuance of this Policy, according to the terms hereof.					

CONSIDERATION. This Policy is issued in consideration of the statements made in the application for this Policy and the payment of the first monthly premium shown above on or before the Date of Policy, and the payment of a like amount on the same day of each month thereafter during the life of the Insured.

CONTRACT. This Policy shall take effect on the date of issue provided that the Insured is then alive and in sound health. This Policy and the application therefor constitute the entire agreement between the Company and the Insured. No agent shall have the power or authority to change, alter or waive any of the terms or conditions, or any portion of this Policy. The terms of this Policy can not be changed nor its conditions waived except by written agreement signed by the President or Secretary of the Company.

INCONTESTABILITY. The Company shall have no defense against a claim under this Policy except for fraud or non-payment of premiums. If the age of the Insured has been misstated, the amount payable shall be such as the premium paid would have purchased at the correct age.

PAYMENT OF PREMIUMS. All premiums are payable in advance at the Home Office of the Company but may be accepted elsewhere by a duly authorized agent of the Company.

GRACE PERIOD. A grace period of thirty days will be allowed for the payment of any premium after the first, during which time this Policy shall continue in force. If death of the Insured occurs during the period of grace, any premium then due or in default shall be deducted from the amount payable hereunder.

REINSTATEMENT. In the event this Policy should lapse it may be reinstated by furnishing the Company evidence of insurability satisfactory to the Company and payment of all premiums in arrears, unless the Extended Insurance has expired or the Cash Surrender Value has been paid.

BENEFICIARY CHANGE. By written notice to the Company the Insured may from time to time name a new Beneficiary, subject to evidence of insurable interest satisfactory to the Company, but no such change shall be effective until endorsed on this Policy by the Company. If the Beneficiary shall die before the Insured, the proceeds of this Policy shall be payable to the Insured's estate, or as provided in the Facility of Payment Clause herein.

FACILITY OF PAYMENT. The Company may make any payment provided for in this Policy to husband or wife, or any relative by blood, or lawful beneficiary, or connection of the Insured by marriage, or to any other person who may appear to be equitably entitled to such payment by reason of having incurred expense on behalf of the Insured. Production by the Company of a receipt signed by any of said persons, or of other sufficient proof of such payment to any of them, shall be conclusive evidence that such benefits have been paid to the persons entitled thereto, and that all claims under this Policy have been satisfied.

This Policy is subject to the terms and the conditions on this and the reverse side hereof.

IN WITNESS WHEREOF, the FAMILY SECURITY LIFE INSURANCE COMPANY has, by its President and Vice-President, executed and attested this Policy at Spartanburg, South Carolina, on the date shown in the Schedule above.

FAMILY SECURITY LIFE INSURANCE CO. Seal

SPECIMEN

Charles Honig
Vice-President

J. E. Sloan
President

WHOLE LIFE INSURANCE
Premium Payable During Life

Form 100

TABLE OF CASH SURRENDER VALUES

(Based on "Maximum Amount Insurance" of $500.00)

Age at Issue	After 5 Years	After 6 Years	After 7 Years	After 8 Years	After 9 Years	After 10 Years	After 11 Years	After 12 Years	After 13 Years	After 14 Years	After 15 Years	After 16 Years	After 17 Years	After 18 Years	After 19 Years	After 20 Years	Age at Issue
1	$	$ 3	$ 6	$ 9	$ 13	$ 16	$ 20	$ 24	$ 28	$ 33	$ 37	$ 41	$ 45	$ 50	$ 54	$ 59	1
2	1	4	8	11	15	19	23	27	31	35	39	44	48	53	57	62	2
3	1	5	8	12	16	20	24	28	33	37	41	46	50	55	59	64	3
4	2	6	9	13	17	21	26	30	34	39	43	48	52	57	61	66	4
5	3	7	10	15	19	23	27	32	36	41	45	50	54	59	64	69	5
6	4	8	12	16	20	25	29	34	38	43	47	52	56	61	66	71	6
7	5	9	13	17	22	26	31	35	40	44	49	54	59	64	69	74	7
8	6	10	14	19	23	28	32	37	41	46	51	56	61	66	71	76	8
9	7	11	15	20	24	29	34	38	43	48	53	58	63	68	73	79	9
10	7	12	16	21	25	30	35	40	44	49	54	60	65	70	76	82	10
11	8	12	17	22	26	31	36	41	46	51	56	61	67	73	78	84	11
12	8	13	18	22	27	32	37	42	47	52	58	63	69	75	81	87	12
13	9	14	18	23	28	33	38	43	49	54	60	65	71	77	83	90	13
14	9	14	19	24	29	34	39	45	50	56	61	67	73	80	86	92	14
15	10	15	19	25	30	35	40	46	52	57	63	70	76	82	89	95	15
16	10	15	20	25	31	36	42	47	53	59	65	72	78	85	92	98	16
17	10	16	21	26	32	37	43	49	55	61	68	74	81	88	95	102	17
18	11	16	22	27	33	39	45	51	57	63	70	77	84	91	98	105	18
19	11	17	22	28	34	40	46	53	59	66	73	79	86	94	101	108	19
20	12	18	23	29	35	42	48	55	61	68	75	82	90	97	104	112	20
21	13	18	24	31	37	43	50	57	64	71	78	85	93	100	108	116	21
22	13	19	26	32	39	45	52	59	66	73	81	88	96	104	111	119	22
23	14	20	27	33	40	47	54	61	69	76	84	91	99	107	115	123	23
24	15	21	28	35	42	49	56	64	71	79	87	95	103	111	119	127	24
25	16	23	30	37	44	51	59	66	74	82	90	98	106	114	123	131	25
26	17	24	31	38	46	53	61	69	77	85	93	101	110	118	127	135	26
27	18	25	33	40	48	56	64	72	80	88	96	105	113	122	130	139	27
28	19	26	34	42	50	58	66	74	83	91	100	108	117	126	134	143	28
29	20	28	36	44	52	60	69	77	86	94	103	112	121	129	138	147	29
30	21	29	37	46	54	62	71	80	89	97	106	115	124	133	142	151	30
31	22	31	39	47	56	65	74	83	91	101	110	119	128	137	146	155	31
32	23	32	41	49	58	67	76	85	94	104	113	122	131	141	150	159	32
33	25	33	42	51	60	69	79	88	97	107	116	125	135	144	154	163	33
34	26	35	44	53	62	72	81	91	100	110	119	129	139	148	158	168	34
35	27	36	46	55	65	74	84	93	103	113	123	132	142	152	162	172	35
36	28	38	47	57	67	76	86	96	106	116	126	136	146	156	166	176	36
37	29	39	49	59	69	79	89	99	109	119	129	139	150	160	170	180	37
38	30	40	50	61	71	81	91	102	112	122	133	143	153	164	174	184	38
39	31	42	52	62	73	83	94	104	115	125	136	147	157	168	178	189	39
40	32	43	54	64	75	86	96	107	118	129	140	150	161	172	182	193	40
41	33	44	55	66	77	88	99	110	121	132	143	154	165	176	186	197	41
42	35	46	57	68	79	90	102	113	124	135	147	158	169	180	190	201	42
43	36	47	58	70	81	93	104	116	127	139	150	161	173	184	194	205	43
44	37	48	60	72	83	95	107	119	130	142	154	165	176	187	198	209	44
45	38	50	62	74	86	98	110	122	134	145	157	169	180	191	202	212	45
46	39	51	63	76	88	100	113	125	137	149	161	172	184	195	206	216	46
47	40	52	65	78	90	103	115	128	140	152	164	176	187	198	209	220	47
48	41	54	67	80	93	106	119	131	144	156	168	179	191	202	213	224	48
49	43	56	70	83	96	109	122	135	147	159	171	183	194	206	217	228	49
50	45	59	72	86	99	112	125	138	151	163	175	187	198	209	221	232	50
51	47	61	75	88	102	115	128	141	154	166	178	190	202	213	224	236	51
52	49	63	77	91	105	118	132	144	157	169	181	193	205	217	228	240	52
53	51	65	80	94	108	121	134	147	160	172	185	197	209	221	232	244	53
54	53	67	82	96	110	124	137	150	163	176	188	200	213	225	236	248	54
55	54	69	84	98	112	126	140	153	166	179	191	204	216	229	241	252	55
56	56	71	86	101	115	129	142	156	169	182	195	208	220	233	244	256	56
57	58	73	88	102	117	131	145	158	172	185	198	211	224	236	248	260	57
58	59	74	90	104	119	133	147	161	175	189	202	215	228	240	252	264	58
59	60	76	91	106	121	135	150	164	178	192	206	219	232	244	256	268	59
60	61	77	93	108	123	138	153	167	182	195	209	222	235	248	260	272	60
61	62	78	94	110	125	141	156	170	185	199	213	226	239	252	264	275	61
62	64	80	96	112	128	143	159	174	188	203	216	230	243	255	267	279	62
63	65	82	98	115	131	147	162	177	192	206	220	234	247	259	271	283	63
64	66	84	101	117	134	150	166	181	196	210	224	237	250	263	275	286	64
65	68	86	103	120	137	153	169	184	199	214	228	241	254	267	279	290	65
66	70	88	106	123	140	157	173	188	203	218	231	245	258	270	282	294	66
67	73	91	109	127	144	160	176	192	207	221	235	249	262	274	286	297	67
68	75	94	112	130	147	164	180	195	210	225	239	252	265	277	289	300	68
69	78	96	115	133	150	167	183	199	214	228	242	256	268	281	292	303	69
70	80	99	118	136	153	170	186	202	217	232	246	259	271	284	295	306	70
71	82	101	120	138	156	173	189	205	220	235	249	262	274	288	298	309	71
72	84	104	123	141	159	176	192	208	223	238	251	265	277	289	300	311	72
73	86	106	125	143	161	178	195	211	226	240	25	67	279	291	302	313	73
74	88	108	127	146	164	181	197	213	228	243	25	69	282	293	305	316	74
75	89	110	129	148	166	183	200	216	231	245	258	271	284	295	307	319	75

TABLES OF GUARANTEED VALUES PER $500 OF INSURANCE

The Cash Surrender Values in these Tables are based on a Policy for $500, therefore if this Policy be for a greater or less amount the said values will be proportionately adjusted. For example, if the amount of this Policy at date of lapse is $250 the amounts of Cash Surrender shall be one-half the amounts shown.

(18 D)

TABLE OF EXTENDED TERM INSURANCE

(Based on "Maximum Amount Insurance" of $500.00)

Age at Issue	Number of Months of Extended Term Insurance																		Age at Issue
	After 3 Years	After 4 Years	After 5 Years	After 6 Years	After 7 Years	After 8 Years	After 9 Years	After 10 Years	After 11 Years	After 12 Years	After 13 Years	After 14 Years	After 15 Years	After 16 Years	After 17 Years	After 18 Years	After 19 Years	After 20 Years	
1				18	43	73	99	120	139	157	174	192	209	224	239	251	262	272	1
2			7	30	59	87	109	129	147	164	182	199	216	231	244	256	266	274	2
3			10	36	66	91	112	131	149	167	184	202	217	232	244	255	265	272	3
4			14	44	72	95	114	133	151	169	187	205	219	233	244	255	263	270	4
5			21	51	77	98	117	135	154	172	189	206	220	233	245	254	262	268	5
6			30	58	82	102	121	139	158	176	193	208	222	234	245	253	260	266	6
7		6	37	63	85	104	123	142	160	178	195	210	223	234	244	252	258	263	7
8		12	42	66	87	106	125	144	163	180	196	210	223	233	242	249	255	260	8
9		17	45	68	88	107	126	146	164	181	197	210	222	232	240	246	251	256	9
10		21	46	68	88	108	127	146	165	181	196	209	220	229	237	243	248	251	10
11		23	47	68	88	108	128	147	165	181	195	207	218	226	233	239	243	247	11
12		24	48	68	88	108	128	147	164	180	194	205	215	223	229	234	239	242	12
13		24	47	68	88	108	128	147	164	179	192	203	212	219	225	230	234	237	13
14		24	46	67	88	108	128	146	163	177	189	200	208	215	221	225	229	232	14
15		24	46	67	88	108	128	146	162	175	187	197	205	211	216	221	224	227	15
16	1	24	46	67	88	109	128	145	160	173	184	193	201	207	212	216	219	222	16
17	1	24	46	67	89	109	128	144	159	171	182	190	197	203	208	211	214	217	17
18	2	25	47	68	89	109	128	144	158	169	179	187	193	199	203	207	210	212	18
19	3	25	47	69	90	110	128	143	156	167	176	183	190	195	199	202	205	207	19
20	4	26	49	70	91	110	127	142	154	165	173	180	186	191	195	198	200	202	20
21	5	28	50	72	92	111	127	141	152	162	170	177	182	187	190	193	196	197	21
22	6	29	52	73	93	111	126	140	150	159	167	173	178	183	186	189	191	192	22
23	8	31	53	75	94	111	126	138	148	157	164	170	175	179	182	184	186	188	23
24	9	32	55	76	94	111	125	136	146	154	160	166	171	175	178	180	182	183	24
25	11	34	56	76	95	110	123	134	143	151	157	162	167	170	173	175	177	178	25
26	12	35	57	77	94	109	122	132	140	148	154	159	163	166	169	171	172	173	26
27	14	37	58	77	94	108	120	129	137	144	150	155	159	162	165	166	168	168	27
28	15	38	59	77	93	106	117	127	134	141	147	151	155	158	160	162	163	163	28
29	16	39	59	77	92	105	115	124	131	137	143	147	151	154	156	157	158	158	29
30	18	40	59	76	91	103	112	121	128	134	139	143	147	149	151	153	153	153	30
31	19	40	59	75	89	100	110	118	125	130	135	139	142	145	147	148	148	149	31
32	19	40	59	74	87	98	107	115	121	127	131	135	138	141	142	143	144	144	32
33	20	40	58	73	85	95	104	111	118	123	128	131	134	136	138	138	139	139	33
34	20	40	57	71	83	93	101	108	114	120	124	127	130	132	133	134	134	134	34
35	21	40	56	69	80	90	98	105	111	116	120	123	126	127	128	129	129	129	35
36	21	39	54	67	78	87	95	102	107	112	116	119	121	123	124	124	124	124	36
37	21	38	53	65	76	84	92	99	104	109	112	115	117	119	119	120	120	119	37
38	21	38	51	63	73	82	89	95	101	105	108	111	113	114	115	115	115	115	38
39	20	36	50	61	71	79	86	92	97	101	105	107	109	110	110	111	111	110	39
40	20	35	48	59	68	76	83	89	94	98	101	103	104	105	106	106	106	106	40
41	20	34	46	57	66	74	80	86	90	94	97	99	100	101	102	102	102	102	41
42	19	33	45	55	64	71	78	83	87	90	93	95	96	97	98	98	98	98	42
43	18	32	43	53	61	69	75	80	84	87	89	91	92	93	94	94	94	94	43
44	18	30	42	51	59	66	72	77	80	83	85	87	88	89	90	90	90	90	44
45	17	29	40	49	57	64	69	74	77	80	82	83	84	85	86	86	86	86	45
46	16	28	39	47	55	61	66	70	74	76	78	80	81	82	82	83	83	83	46
47	16	27	37	46	53	59	64	67	71	73	75	76	77	78	79	79	80	79	47
48	16	27	36	44	51	57	61	65	68	70	72	73	74	75	76	76	76	76	48
49	16	26	35	43	49	54	59	62	65	67	69	70	71	72	73	73	73	73	49
50	16	26	34	42	47	52	56	59	62	64	66	67	68	69	70	70	70	70	50
51	16	25	33	40	46	50	54	57	59	61	63	65	66	67	67	67	67	67	51
52	15	25	32	39	44	48	52	54	57	59	60	62	63	64	64	64	64	64	52
53	15	24	31	37	42	46	49	52	54	56	58	59	60	61	61	61	61	61	53
54	15	23	30	35	40	44	47	50	52	54	56	57	58	58	58	58	58	58	54
55	15	22	29	34	38	42	45	47	50	52	53	54	55	56	56	56	56	55	55
56	14	21	27	32	36	40	43	45	48	49	51	52	53	53	53	53	53	52	56
57	14	20	26	31	35	38	41	43	46	47	48	49	50	50	51	50	50	49	57
58	13	19	25	29	33	36	39	41	44	45	46	47	48	48	48	48	47	47	58
59	13	18	23	28	31	35	37	40	42	43	44	45	45	46	46	45	45	44	59
60	12	17	22	26	30	33	36	38	40	41	42	43	43	43	43	43	43	42	60
61	11	17	21	25	29	32	34	36	38	39	40	41	41	41	41	41	40	40	61
62	11	16	20	24	27	30	32	34	36	37	38	38	39	39	39	38	38	37	62
63	10	15	19	23	26	29	31	33	34	35	36	36	37	37	36	36	36	35	63
64	10	14	19	22	25	27	30	31	33	33	34	35	35	35	35	34	34	33	64
65	9	14	18	21	24	26	28	30	31	32	32	33	33	33	33	32	32	31	65
66	9	13	17	20	23	25	27	28	29	30	31	31	31	31	31	31	30	30	66
67	9	13	17	20	22	24	26	27	28	29	29	29	30	29	29	29	28	28	67
68	9	13	16	19	21	23	24	25	26	27	28	28	28	28	27	27	26	26	68
69	9	12	15	18	20	22	23	24	25	26	26	26	26	26	26	25	24	24	69
70	8	12	15	17	19	21	22	23	24	24	24	24	24	24	24	23	23	22	70
71	8	11	14	16	18	20	21	22	22	23	23	23	23	23	22	22	22	21	71
72	8	11	13	15	17	19	20	20	21	21	22	22	22	21	21	21	20	20	72
73	7	10	12	14	16	17	19	19	20	20	20	20	20	20	20	19	19	19	73
74	7	10	12	14	15	16	17	18	19	19	19	19	19	19	19	18	18	17	74
75	7	9	11	13	14	15	16	17	17	18	18	18	18	18	17	17	16	16	75

and in the Senate and in the testimony taken at the latter hearing (Page 81) stated: "Mr. Chairman, this is Albert Orgain, President of the South Carolina Underwriters Association. Gentlemen, I am glad that I got up from the sick bed, and I have been in it for three days, to come down if for no other reason to answer one accusation that has been cast my way this evening. It has been said to you gentlemen here that I and I am the man, that a man made a speech in Union, and that he said that 4,200 life insurance agents in the State of South Carolina would be put out of business if this kind of thing was allowed to operate. Gentlemen, I did not say that. (The newspaper's account of that speech will be handed to the Court as Plaintiff's Exhibit, "C".) I said this: That this would affect approximately 4,200 life insurance men in the State of South Carolina * * * (Page 82.) Gentlemen, the life insurance company men of South Carolina are 100 percent [fol. 107] against the manner in which this company proposes to write and service life insurance. I will tell you again as I have told them over there and as I have admitted before every group that I have spoken to that they have a life insurance company that is organized under the state law, and has met every law that is on the books, and they are running on the Commissioner's standard of arriving at rates, and we are not in any way, shape, form, or fashion attacking the life insurance company's proposal to do this. We are attacking, again I repeat, the method of distribution * * * (Page 83.) These gentlemen are not proposing to do business as has been done in those two states because they have put a clause in their policy which says "We will pay in cash." * * * Now, gentlemen, it comes back differently. It comes back to you as a legal reserve life insurance company meeting all of the laws, but saying that we will tie this with funeral homes throughout South Carolina * * * (Page 86.)

Mr. Johnston: Is there any reason if that man did want that mortuary to bury him, is there any reason to deprive him who is paying the premium of that freedom of choice?

Mr. Orgain: I will answer you by saying this: That I believe that in the two states that I have mentioned to you that if it is allowed to operate in this state that unscrupulous undertakers could take advantage of the situation.

Mr. Johnston: Well, I thought according to Mr. Ward

that honesty and integrity were the badges of the undertaking profession. I want to ask you that same question then. Is there any reason why the insured should be deprived of the freedom of choosing a mortuary to handle his remains if he so chooses?

Mr. Orgain: Mr. Johnston, I am told that one of the duties of the legislature is to legislate in the best interests of the public. If they feel it is all right, then it is. How-[fol. 108] ever, the Underwriters Association tries to keep insurance on a high plane and we resent certain influences or influences that tend to come into it. (Page 87.)

Mr. Johnston: What you mean is it would lower the standard?

Mr. Orgain: That is what I mean—that it would have a tendency.

Mr. Johnson: But you are not worried about competition? It would just lower the standard of your business?

Mr. Orgain: To show you how matters get out of hand, take in Louisiana——

Senator Mozingo: Everybody keeps talking about what Louisiana, Alabama, or Charleston does. Do you have any single illustration of any policy holder under the operation of this plan who has been abused, cheated, defrauded, or anything else, or any complaint of any policy holder?

Mr. Orgain: No, sir.

Senator Mozingo: I am not representing the funeral interest, but I have had complaints in my office about insurance companies. I just wondered if you had any specific illustration in South Carolina against the mortuary insurance business?

Mr. Orgain: No, sir.

That in addition, Mr. Orgain wrote to some, if not all, of the various local Life Underwriters' Associations, urging their membership to become active or the passage of the Act assailed (a copy of one of these letters will be handed to the court as Exhibit "B").

In addition to Mr. Orgain speaking for the passage of the bill N. A. Turner, Esq., of the Columbia Bar and General Counsel for the Carolina Life Insurance Company, a leading South Carolina insurance company engaged to a large extent in writing industrial insurance, spoke for the passage of the bill, in part as follows:

[fol. 109]. (Page 29 Senate Hearing):

"I am Nat Turner. I want to testify. I came up here primarily because I heard my name called, and it seemed to be in connection with trying to limit the scope of my practice. * * * Mr. Chairman and gentlemen, I represent the Carolina Life Insurance Company, and probably would not have appeared voluntarily here were it not for the fact that in the House when this bill was being considered in that body the statement was made that the insurance companies did not favor the passage of this bill. That was the impression given by one of those who spoke. The Carolina Life Insurance Company being in the industrial and life insurance business, and having been in that business for something over 40 years, at least someone connected with it has some fair knowledge of the business, and I am here to say that that company certainly is in favor of the passage of this bill. Now, we hope that that position upon our part is not actuated solely because of the monetary gains that we might receive over a period of years by keeping one more insurance company out of business. * * * (Page 31.) Other insurance companies have stated they are in favor of the bill's passage. Mr. Walker who represents the Capital Life Company says that I might say the same thing of him. I understand that the agents of our company have expressed favor with the bill and disfavor with the idea of the business being written through undertakers and through mortuaries directly, and have expressed their favor of the measure."

During the hearings and while the Act assailed was in process of being passed by the South Carolina Legislature deponent was approached by one J. O. Kendrix of Greer, South Carolina, an associate with Mr. Wood, of Greer, in the undertaking business, who suggested to deponent that he call off his opposition to the passage of the [fol. 110] bill stating that he (Floyd) should be concerned or afraid of the adverse effect which the approximately 500 industrial agents in Spartanburg County could have upon Floyd's undertaking business.

That deponent had no intention or purpose of keeping other undertakers, particularly veterans, from engaging in business in South Carolina, and avers that 3 of the 5 directors of Family Security Life Insurance Company (de-

ponent being one) are veterans of World War II and to the best of his knowledge the majority of all of the younger agents employed by Family Security are also veterans of World War II. That the only restriction that Family Security Life Insurance Company has placed upon the sale of its stock is that the stockholders shall be engaged in the mortuary or undertaking business.

That deponent's only competitor in the City of Spartanburg for many years has been the M. W. Bobo Undertaking Establishment and for approximately 25 years M. W. Bobo, Sr., owner of this concern, was State Agent for the Woodmen of the World Insurance Company and wrote literally thousands of life insurance policies in this company and to all outward appearances conducted that business of life insurance in conjunction with his undertaking business and for all these years it did not cause deponent to go into the life insurance business, it did not put him out of business and he avers that he buried as many people who owned Woodmen of the World policies as did his insurance writing competitor.

As to the several affidavits in the defendant's answer concerning the inadequacy of the 5% commission which Family Security Life Insurance Company at one time offered to the agencies—deponent's knowledge, acquired from other insurance companies and their experience, is that [fol. 111] this allowance is entirely adequate to take care of the increased costs to the mortuary or undertaking establishment.

(S.) J. Gordon Floyd.

Sworn to and subscribed before me this 12th day of May, 1948. (S.) Ruth Crick, Notary Public for South Carolina.

EXHIBIT "A" to affidavit of O. Charles Honig

Advertisement Appearing in Newspaper Published in Rock Hill, York County, South Carolina

SPECIAL NOTICE

Should the governing bodies of South Carolina see fit to allow burial insurance to be written in this state, we will offer a burial plan backed by a well known, reliable insurance company.

WOLFE, TODD & MORRIS FUNERAL HOME

358 E White St. Phone [illegible] Rock Hill, S. C.

[fol. 113] EXHIBIT "B" TO AFFIDAVIT OF O. CHARLES HONIG

Columbia, S. C.,
Feb. 9, 1948.

There has been introduced in the House of Representatives a Bill H-1141, making it unlawful for any life insurance company to own, operate, or maintain a funeral or undertaking business or to contract with any undertaking establishment to conduct a funeral for any person insured by such insurance company, or for any agents, officers or employees to be licensed as agents, salesmen or solicitors for any life insurance company doing business in this State.

I cannot too strongly urge your immediate and full support of this measure. It should be unnecessary for me to comment in detail upon just what hardships would be worked on our industry if these companies writing funeral benefits are permitted to come into South Carolina. I know from my personal observation the effect which that sort of business has had on the industrial companies in other States, and I do not hesitate to say that you, as an underwriter, endeavoring to follow the most upright lines in soliciting, will never cease to regret the day if these companies are permitted to enter our State.

Fortunately, the large majority of the undertakers of South Carolina whom these companies designate as their writing agents do not want the undertaking business and the insurance business commingled and are, therefore, heartily in favor of the passage of the aforementioned bill.

Since this bill was introduced only Thursday last, no hearing has yet been set before the Banking & Insurance Committee to which it was referred, although unquestionably a hearing will be had. Please, immediately upon receipt of this letter, contact your legislative delegation and insist upon their whole-hearted support of this measure. We sincerely believe that the insurance companies as they are now being operated, are giving adequate protection and service to our people, and we do not believe it would be to the best interests of the public, the companies, or the agents to allow funeral homes to sell insurance in South Carolina. It is essential for your good and for the good of the industry that this bill be enacted into law immediately. May I suggest that you pass this letter on to the Secretary of your Association and have him get out a

(Here follows 1 photolithograph, side folio 112)

Bulletin to all members of your local group, asking them to contact their representatives in the legislature. I would appreciate it if you would send me a copy of the letter to your membership.

Cordially yours, A. M. Orgain, President.

AMO/ml.

[fol. 114] Exhibit "C" to Affidavit of O. Charles Honig

Union Daily Times, Union, South Carolina. Thurs., February 26, 1948

Insurance Men Organize Life Underwriters Group

S. C. Chapter Proxy Assails "Pre-Funeral Financing"

Insurance men connected with the various companies operating in this county gathered at the Fair Forest hotel last evening and voted to organize a Life Underwriters Association of Union County.

Bryce Zeigler was elected president of the local association, with Guy Sparks as vice-president and Marvin Stone as secretary-treasurer. A six man Board of Directors was elected, including J. H. Riley, Jimmy Watson, Ralph Phillips, Carl Stevens, Harold Palmer and Willie Lee. The Union chapter will be affiliated with both the state and national chapters of life underwriters.

The insurance men attending the session were called upon by A. M. Orgain, president of the Life Underwriters of South Carolina, to lead a fight to influence the legislature to enact bill 1141, which would bar undertaking establishments in this state from operating an insurance company and would in turn prohibit insurance companies from operating funeral homes.

Mr. Orgain charged that under the "pre-funeral financing" plan, now proposed by one company, "the undertakers would collect a profit two ways" and he further stated that he believes "this would create a condition in this state that would not be in the best interest of the general public."

The speaker declared that the new company would dispense insurance through its principle stockholders—"the undertakers," without the usual agency system and held

that this method would endanger the livelihood of 4,200 men in this state now engaged in the insurance profession.

[fol. 115] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

Civil Action 1918

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, Plaintiffs,

vs.

HONORABLE JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, HONORABLE L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, Defendants

Stipulation of Trial Proceedings—Filed September 4, 1948

Columbia, S. C., May 17, 1948.

Before: Hon. Armistead M. Dobie, United States Circuit Judge, Hon. Charles Cecil Wyche, United States District Judge and Hon. George Bell Timmerman, United States District Judge.

APPEARANCES: Donald Russell, Esq., C. Erskine Daniels, Esq., E. W. Johnson, Esq., and T. Sam Means, Jr., Esq., Represented the Plaintiffs.

T. C. Callison, Esq., Edgar A. Brown, Esq., D. W. Robinson, Esq., and R. N. Ward, Esq., Represented the Defendants.

B. D. Cook, Official Reporter

PROCEEDINGS

Judge Dobie: The Court will proceed with the case of the Family Security Life Insurance Company, et al, against [fol. 116] John M. Daniel, et al. May I ask if you wish to introduce any evidence this morning, or whether you are going to try this on the affidavits?

Mr. C. E. Daniels: If Your Honor please, we have been able to stipulate certain of the facts which would enable the Court to proceed. But, we have been unable to stipulate all of the facts, or to stipulate that it may be heard on the affidavits filed. I'm willing to stipulate that they may file reply affidavits if they wish in such time as the Court will allow, and then we would like it submitted for final determination on the affidavits, the affidavits to be considered by the Court, which will pass upon their relevancy and competency without being burdened with formal objections to each and every one.

Judge Dobie: I think it would save a great deal of time if we could try it that way. Are there any objections on the other side to that?

Mr. Robinson: If the Court pleases, we have agreed on a stipulation which I think covers all the essential facts in the case. There is a great deal of material in the plaintiffs affidavits which we think have no relevency here, and on which we do not wish to stipulate. We have no objection to submitting the case for final judgment on the stipulation. But, there is a great deal of material within the affidvaits to which, not knowing whether Your Honors would consider as pertinent, there would be difficulty in replying. For instance, about how prepaid funerals operate in other states. We do not think such testimony has relevancy here, but if we are required to answer those affidavits in the absence of knowing whether the Court would consider them relevant or not, the State would be [fol. 117] put to great expense and inconvenience. We do not feel that we should be left uncertain as to whether they are or are not to be considered.

Judge Dobie: Well, how would it do then to submit it on the stipulation and the affidavits? And, of course, you can argue to us about their relevancy. And we'll take all the affidavits subject to the ruling of the Court as to their relevancy and as to their weight.

Mr. Robinson: But if we could have a ruling today we would know whether we wish to reply to them. If we are left uncertain as to their relevancy that puts us in a rather difficult position. We believe that the stipulation covers all of the allegations of the Complaint and the Answer. But we think that the affidavits go well beyond the pleadings.

Judge Dobie: Well, now couldn't you cover that in your

argument, and leave the relevancy of them and the weight to be given to them, and all of that to us?

Mr. Robinson: We would be in the status of not knowing whether we should file reply affidavits if we do not have a ruling on the relevancy now.

Judge Wyche: We'll note your objection. You may file reply affidavits later.

Judge Dobie: Well, its a little difficult for us to rule on the relevancy of all of that before we have heard the arguments or anything of that kind. So, I am in favor of Judge Wyche's suggestion that you file any stipulations you want, and they can file any affidavits they have, and we'll give you any reasonable time that you want to file reply affidavits. Then, of course, in your arguments, you can cover that question as to the relevancy or the impor-
[fol. 118] tance of anything in their arguments or anything in their affidavits.

Mr. Robinson: Well, if your Honor please, the State will go forward on that basis. We would appreciate it if the Court could indicate to us the relevancy of some of this material at the conclusion of the arguments, so that we wouldn't file unnecessary material with the Court.

Judge Dobie: All right.

Mr. C. E. Daniels: If your Honors, please, it has been agreed that the paid in capital of the Plaintiff insurance company is sixteen thousand dollars, and the paid in surplus is sixty-four thousand dollars. And, there will be supplied a figure that is left blank here, a monthly tabulation of the amount of insurance in force.

Mr. Robinson: In paragraph five of the stipulation?

Mr. C. E. Daniels: In paragraph five. Is there anything else on that, Mr. Russell?

Mr. Russell: No. We were going to put in the stipulation the policy by-laws of the plaintiff.

Mr. C. E. Daniels: Oh, yes. We also offer the by-laws in evidence. We will supply to the Court and to counsel on the other side copies of the by-laws.

Judge Dobie: All right, Mr. Daniels. You may proceed.

Mr. C. E. Daniels: Now, then, in order to protect ourselves, I have filed a motion to strike the Answer, and for judgment on the pleadings, on the broad grounds that the Answer does not put in issue any sufficient degree any material allegations of the complaint essential to the plain-

tiffs' cause of action. And, the portion of the Answer denominating a further defense is nothing more than a statement that South Carolina has had a statute for a long [fol. 119] time forbidding the payment of insurance policies in goods and services. And they allege in there that they believe this insurance company intends to evade that statute. In other words, that is our policy and our by-laws, and what we say. We have alleged in our motion that there is no grounds to support an inference or a presumption that we intend to break the criminal law or to cheat and defraud. And we make that cause of action under Rule Twelve. We move to strike those portions of the Answer because they are irrelevant and have no bearing on the case. They have also stipulated that we may file our policy contracts.

Mr. C. E. Daniels: Now, if your Honor please, should we not proceed with the introduction of our exhibits and the affidavits we wish to submit, and the testimony before we proceed to argue?

Judge Dobie: Yes.

Mr. C. E. Daniels: Your Honors, we offer in evidence a specimen policy, and photostatic copies of letters to the Floyd Mortuary from the Insurance commissioners of Insurance Departments of Louisiana, Tennessee, Mississippi and Alabama. We have three copies of each.

Mr. Robinson: If your Honors please, we object to the introduction of these letters upon the ground that they are not relevant to any issue here, and they are hearsay testimony.

Judge Dobie: All right. We'll consider all of this subject to your objection and in connection with your opportunity to file any counter affidavits you wish. Judge Wyche just made an excellent suggestion that if this case should go to the Supreme Court, maybe they will consider things relevant up there that we wouldn't consider relevant here. [fol. 120] There are two or three cases, I believe, on record of that fact. So we will give you your objections and we will take all of this subject to its relevancy and pass on its weight.

Mr. C. E. Daniels: We also introduce the transcript of the Senate Hearing before the Banking and Insurance Committee. And we have two types of policies. We introduce this specimen policy. Now, this is the Girden Report. It's in two volumes, and we offer them to the Court.

Mr. Robinson: Our objection goes to that.

Judge Dobie: All right.

Mr. C. E. Daniels: It's understood, of course, your Honors, that I'm introducing these. . . .

Judge Dobie: Yes, We understand that you're introducing all of this so it will not be necessary to repeat. All right, Mr. Daniels.

(Mr. Daniels argued to the Court in behalf of the plaintiffs).

(Mr. Robinson argued to the Court in behalf of the Defendants).

(Mr. Russell argued to the Court for the Plaintiffs in reply).

Judge Dobie: Have you anything further?

Mr. Robinson: No, sir.

Judge Dobie: Well, suppose we give you ten days to file any briefs or any supple, *emtary* materials that you care to file. Will that be satisfactory?

Mr. C. E. Daniels: Yes, sir.

Mr. Robinson: Yes, sir.

(Whereupon the hearing adjourned)

[fol. 121] It is hereby stipulated between counsel that the attached seven pages constitutes a proper transcript of the oral testimony taken May 17, 1948.

It is further stipulated that the blanks in paragraph 5 of the stipulation shall be filled in as follows:

Amount of insurance in force February 3, 1948, two policies, amount $500.00.

Amount of insurance in force February 17, 1948, $50,000.00.

(S.) Donald Russell, (S.) C. Erskine Daniels, (S.) E. W. Johnson, (S.) T. Sam Means, Jr., Counsel for Plaintiffs.

(S.) John M. Daniel, (S.) Edgar A. Brown, (S.) David W. Robinson, Counsel for Defendants.

Sept. 3, 1948.

[fol. 122] EXHIBIT "P-6"

STATE OF SOUTH CAROLINA, PROCEEDINGS OF THE SENATE BANKING AND INSURANCE COMMITTEE

In re "THE MORTUARY BILL"

Date: 3 p. m. Wednesday, Mar. 31, 1948.
Place: Senate Chamber, Columbia, S. C.

[fols. 123-124] No. 1382

In re "THE MORTUARY BILL"

Hearing was held in the Senate Chamber of the State House, Columbia, South Carolina, at 3 p. m., Wednesday, March 31, 1948.

Members of Committee Present: Senator J. Moore Mars, Chairman; Senator J. M. Lyles, Senator Edgar Brown; Senator William P. Baskin; Senator Jas. B. Pruitt; Senator Lawrence L. Hester; Senator J. Carl Kearse; Senator R. M. Jefferies; Senator Jas. P. Mozingo; Senator Olin Sawyer; Senator Wilbur G. Grant; Senator O. T. Wallace; and Senator Paul Wallace.

Members in Absentia: Senator W. Brantley Harvey; Senator J. D. Parler; Senator George Warren; Senator Rembert C. Dennis; and Senator D. S. Allen.

PROCEEDINGS

Chairman Mars: The next bill we will take up *Is* 1382, the Mortuary Bill. How do you gentlemen wish to present your argument?

Sen. Pruitt: Mr. Chairman, I suggest we find out how many pros and cons are here and assign a certain amount of time to each side, and then let them designate their speakers whoever they want to talk to the committee, and limit them to that time because I know all the members of the committee have other things to attend to. I suggest you let them give their names to you now, and then how long they think they will require for each side. I don't want any of these merits of the bill to speak for themselves. I understand from those who are sponsoring the bill that Mr. R. N. Ward from Greenville will speak. Are there any others who will speak?

Mr. Tyson: Mr. Chairman, I understood this was to be testimony rather than speeches. I represent Mr. Pennington of Hartsville who is interested in this bill. There are [fol. 125] other gentlemen here who represent other people, and we have gone on the assumption that what you want is facts and not oratory, and we have witnesses here who we believe will show to you gentlemen the real merits of the opponents bill, and we would ask you to kindly indulge us to let us show you the facts by testimony, and I am going to be bold enough to ask that you don't limit us. You are right at the end of the session, and there is one man in particular who represents an establishment of 62 years duration who has been delayed in what he is now doing, and would be outlawed by four years service in the Army. We would like for you to hear him. We would like for you to hear his witnesses, and when you have a matter that takes a man entirely out of business, who has spent thousands of dollars preparing for it, I don't believe the Senate would be interested in limiting him to a time insufficient to present his case. That just briefly is the situation, and as we present our testimony without oratory and great speeches, I think you will see the real merits of what I am talking about.

Sen. Pruitt: Mr. Chairman, that is so out of order to ask this committee to sit down here and take testimony of the committee on a bill that I am surprised at my good friend to make such a request. If he has got certain men who want to speak, the committee will hear them, but we certainly don't have time to take testimony from a group of employees of somebody who may be interested in the bill, and I still say, Mr. Chairman, I think they should announce who is to speak for them and how long they think it will be necessary to present their side.

Mr. Tyson: We have some people here who are not lawyers. Not trained as my good friend Pruitt is at speaking, but who can speak the truth to you if you give them an opportunity to do it, and they would go all to pieces if they had to make a speech. I don't care if you take down what they say, but——

Sen. Pruitt: Looks like you have made arrangements for that.

Mr. Tyson: Very frankly, I don't know what the procedure is in these matters, but I have never before heard of a situation under our American form of government

[fol. 126] when a committee interested in finding facts refuses to listen to facts and turns it over to oratory. If that is your procedure, we bow to it.

Sen. Pruitt: We will give Mr. Tyson as long as he tells this committee he wants, Mr. Chairman. We will let him, or any other person he names, speak, but we certainly, I for one, don't have time to sit here all evening and night listening to come testimony as though we were in a court room, and that has never been done before any committee that I have been a member of.

Mr. Tyson: We did it in a tax case, and you were with me at the time, and, in fact, you asked for it.

Chairman Mars: I am going to ask the committee to retire in executive session and determine the procedure we will follow.

(At this point, a short recess was taken.)

Chairman Mars: The Committee has voted 45 minutes to each side. We will hear the proponents of the bill now.

Mr. Douglas MacDougald called.

Mr. MacDougald: Mr. Chairman, and gentlemen of this committee. I am for the passage of this bill for several reasons. One of which I think is that if is better for the public at large that this bill be passed. Second, I am convinced by observation that it is definitely better for me as an operating undertaker in South Carolina. I make this statement without fear of being challenged. I think most of the funeral directors here I know, and they know me. I operate a medium-size funeral business in Anderson, South Carolina. I organized that business myself. I didn't inherit it. I built it to where it is today by hard work, and I have seen lifetimes put into a business crumpled under the feet and the heel of insurance organizations. I personally think that the bill, this insurance plan, that has precipitated this meeting today was conceived *for* a profit making standpoint. Not for an effort to perpetuate a business. That has been proven by similar situations in adjoining states, and I refer to the situation in Alabama. In 1932, there was a man who was of a mediocre ability. Since [fol. 127] this man is taking it down here, I have to curb my words. I don't want to be liable for anything I might say. I will try to put this man in a category by saying that he operated a medium-size funeral business in this

town and was going broke, almost unable to pay his bills, and he conceived a plan of a burial insurance, and began to sell this insurance and hired agents. The money was paid at his place of business. The people were compelled to come there to pay their premiums. This plan paid off in cash. I am sorry, I mean paid off in merchandise and services. When a policy holder in good standing died, they came in and said, "This is your $500 funeral," and it made no difference if the family could afford it or not. I would have challenged his being in the funeral business. This plan that is proposed in South Carolina does pay off in cash, but the other stipulations are the same as I understand. You come to the place of business, the mortuary, to pay it. Month in and month out. The inducement for a funeral director to align himself with this is the fact that it will freeze this business to him. He doesn't have to, let me hasten to say. You don't have to call that funeral director, but if he continuously beats a path to his door to pay his insurance, there is no question about it that if he has any decent employees, they are going to convince the man the thing to do is to come to them. Now, is that a healthy situation? You gentlemen think there. Is that a healthy situation for me? I may be an upright man operating a legitimate business, but I got an idea I got the inside on you when you come in there and you have a $750 insurance policy with me. I know that it is in good standing or maybe it is in arrears, but I know that my pay depends on that insurance policy being in good standing. That is an angle to think about. You gentlemen, not many of you except my good friend down on the end, know little about the price of a funeral. It has been said that there is a policy covering a $750 funeral. If a funeral is paid off with that policy, it might not be as good a funeral as if you had freedom of marketing to go in and buy a funeral from whom you please, and pay with any kind of insurance you [fol. 128] had. With this insurance, you would be the agent. You would deliver the check when it came down to pay off. That I don't believe is healthy for the public, or for me as an operating funeral director in South Carolina. I can see this by reason of the fact that if I don't align myself with some company, and this is allowed to continue, I will be practically out of business in a short period of time. That gentlemen is history, and has proven itself. I have no alternative of staying out. Those that oppose

this bill have repeatedly said it will force a man out of business. Gentlemen, it will just as visibly force me into a business that I don't care to go into unless I close up. I have an alternative. I can close up. That has been proven in more than one case. If this insurance is allowed to be sold in Spartanburg County, there is no doubt about it that the men in Greer are positive that they have to do something immediately. When they do, the men in Greenville will do the same, and in Pelzer, Anderson, Abbeyville, and McCormick, right on down. There is no alternative, gentlemen. There is no way in the world. If the bill don't pass, I am legislated into the insurance business. I have no course other than to close up. My business to me is more than dollars and cents, frankly. I started it from its infancy, and I worked hard. If I hadn't had a lot of good creditors, I would have been washed up long before, but I worked night and day, and I have to operate my business myself. I don't have an organization that I could go out and hand pick and bring in about 25 men here today by putting my fingers on them. I am the only man from my firm here today, and I am the firm—me and the bank, and I want to try to operate it, and I don't want to have to get into a business I don't want to get into. I know nothing about it, but I will have no alternative if this bill doesn't pass. I will cite a case: A friend of mine came up and said, "Doug, I would like for you to put this obituary in the paper." He said, "My father died this morning, and I started out to Anderson to get you and met my sister [fol. 129] in the door, and she said, 'Where are you going?', and I said, 'Going to Doug MacDougald, and ask him to take care of our father.' 'She said, "I would like to do that, I would much rather have him, but you know I got an insurance policy across over here in Elberton, and we will have to go over and get them." I said, "Bill, she was wrong. That insurance has to pay off in cash," and he said, "I wish I had known that because we would lot rather have you." That bears out, gentlemen, that if they don't know the facility of cash is in there, it might as well not be in there, and consequently, the other man handling the funeral wasn't their choice. The people were not satisfied, but they couldn't afford to lose that much money. We have assembled here in Columbia more than one time to protest. The last time we met, I was elected spokesman for this group. I forget the exact number that were present, but

it could well have been 75 funeral directors from all sections of this state. They chose me to speak. Why, I don't know, but I know they couldn't have chosen a man that is any more interested in the passage of this bill for the sole survival of his business. When I speak to you, I represent not any Association of Funeral Directors, or any insurance company. I speak to you as having been elected from some 60 men who represent a group, and, gentlemen, they are vitally interested in the passage of this bill, and if I am not entirely out of order, I would like to call your attention to the vote across the hall as an indication of the way the funeral directors feel. There are approximately the same number of funeral directors in South Carolina as men who voted on this twin bill if I can refer to it as that. There were 105 men voting on the other side, and I believe they voted the sentiment of their people at home. Eighty-eight of those men voted for the passage, and 17 voted against it. Gentlemen, I just believe that the overwhelming majority is in favor of the bill. There is nobody trying to pass the buck or avoid any work in supporting this bill. We want to stay in our business. We want to stay out of the insurance business, and we want the insurance companies to [fol. 130] stay out of our business. This bill would, of course, eliminate the insurance companies from going into the funeral business. Ninety-five percent of the funeral business in Alabama are owned and controlled by one insurance company. The other men are working for them. That is all I have, gentlemen. Thank you.

Sen. Pruitt: I would like to ask a question: How many undertakers are there in the state?

Mr. MacDougald: Approximately 120.

Sen. Pruitt: How many are in favor of the passage of this bill if you have any idea?

Mr. MacDougald: I have no way of knowing. I just used that indication across the house. I think they voted the sentiments of the funeral directors back home. 88 to 17, and they were scattered all over the state.

Mr. Mozingo: Mr. MacDougald, I noticed you said a while ago that you had a situation where you were able to bury someone, but they went to Georgia because they had a burial insurance policy there. If this bill was passed, it wouldn't prohibit anybody from going to Georgia still, would it? In other words, it would eliminate anybody in South Carolina, but they can still go to Georgia. You just don't want any-

body in South Carolina to get that money by selling this insurance like they do in Georgia?

Mr. MacDougald: Make money, did you say? Can I say this in reply to that? This proposes to pay 5 percent for collection. I would house the office. I would receive the money, I would furnish all the postage, I would collect any delinquent accounts, and I would be continuously answering the door bell for these people to come in and pay 50¢ a week, and, gentlemen, that is repulsive to me to knock on someone's door and to say "I want to sell you a funeral before you die." The insurance business is perfectly legitimate, and if anybody wants to operate it in the next building, that is perfectly all right with me, but when it comes out of the [fol. 131] same office and the same door that, to me, is repulsive. Now, I do not believe that this bill would cure the ills over on the border of North Carolina where we have a law that absolutely prohibits burial societies from operating in this state, and that is what they are doing at the present time. It is a fault of the law enforcement agencies that permit these burial agencies to write policies in this state, and I don't believe that this proposed bill would eradicate that.

Mr. Mozingo: Here is what I don't understand: While you don't want to answer the doorbell, and go into this thing, I don't see why you would be forced to go into this anymore than you would the grocery business.

Mr. MacDougald: You are in the legal business. Here is the situation: If you were in a town of a reasonable size and the only practice that you limited yourself to was liability or accident cases, you confine yourself to that, but now, you had a friend over here who controlled all the ambulances——

Sen. Mozingo: I thought you controlled the ambulances.

Mr. MacDougald: I am just citing a situation. If he received a call that there was a wreck, and then he called you, his friend, and said, "I am going to such and such a place where there is a bad wreck, that would be bad, wouldn't it? But if he said, "Wait, I will come by and get you," and you go out there and help bring the patients back to the hospital, and give him a blood transfusion, and when he gets well, you tell him he has a perfect case, and he says, "We will sue the hell out of them," that would be even worse. That is the same comparison as in this situation.

Senator Mozingo: In answer to that, my being in the legal profession: Do you think it is right that I ought to pass a bill limiting the practice of Mr. Nat Turner to engage in any kind of practice except insurance companies? I don't see where this has any more to do with that than it does an insurance company owning a radio station. The theory of the thing doesn't look right to me. Looks like any man can go into any business and to do otherwise would be [fol. 132] to discriminate. You said a while ago that with this policy if a man is in arrears and the undertaker knows that is the only way he would get his money he would try to make him keep the policy up, and would still give him a funeral if his policy hadn't lapsed. That is a better deal than I can get from the insurance companies.

Mr. MacDougald: I can answer that by making this statement: We are licensed in South Carolina, insurance agents are licensed in South Carolina. You license a doctor, but that don't automatically give him a license to practice law.

Sen. Mozingo: Now, these insurance agents sell insurance, rent houses, finance automobiles, and I am not in favor of restricting any group. Of course, Governor Thurmond has a different idea. He doesn't believe in any man holding two jobs.

Mr. MacDougald: May I ask you a question? Didn't you vote against a bill that whiskey to be sold in cafes? Of course, I don't want to be personal.

Sen. Mozingo: Listen, Mr. MacDougald. You can get as personal as — want with me. I am in politics.

Mr. MacDougald: Gentlemen, I do appreciate the sympathetic air you have given me. I just wanted to state my position in the best way I could.

Mr. Tyson: Do any of you undertake to sell tombstones?

Mr. MacDougald: I do not know of anyone, no sir.

Mr. Tyson: Do any of them sell furniture?

Mr. MacDougald: Yes sir.

Mr. Tyson: Do any of them engage in any other business besides undertaking?

Mr. MacDougald: Sure. However, we don't have any in our town that do.

Mr. Tyson: What is the difference between an undertaker selling furniture, and engaging in any other business?

Mr. MacDougald: Let me ask you if you don't mind——

[fol. 133] Mr. Tyson: How about answering my question?

Mr. MacDougald: In selling furniture, you are delivering

a commodity that you can see. When you pick it out, you deliver it immediately after, but in insurance you sell a contract and they promise to deliver. Does that answer your question?

Mr. Mozingo: Let me ask you this: To tell you the truth, I have been a good friend of the undertakers. As a matter of fact I addressed a funeral directors group. I don't know if it had any significance or not—whether they thought I was politically dead or not, but here is the thing: It looks to me like somebody sold you gentlemen a bill of goods. You are the only group of men to come and say "I am an undertaker and don't let me do anything else." It seems to me that——

Sen. Wallace: Mr. Chairman, we have some bills coming from the House at this time.

Chairman Mars: We will suspend one moment.

(At this point there was a short recess.)

Chairman Mars: All right, gentlemen, we will proceed.

Mr. Tyson: Mr. MacDougald, you wouldn't have any objection, would you, if an amendment to this bill were added whereby anyone who is already licensed by the state and engaged in this business could continue, would you? You wouldn't want to put a man out of a business for which he had been licensed by the state who already had employees, agents, and policy holders?

Mr. MacDougald: You asked me two questions, Mr. Tyson. I would definitely object to an amendment that would allow him to sell funeral insurance from his mortuary if he is doing it today. I think, of course, you can see that very easily. It would strangle the man next door to death. That would be like giving him a license to shoot him with, but not give him a license to buy a gun. You can see that, Mr. Tyson.

Mr. Tyson: So you would be willing and want the general assembly to put out of business a man who is already in business and has agents working who would be put out of work?

Mr. MacDougald: I would want them to pass a bill which [fol. 134] would require an insurance company to provide their own facilities away from a mortuary, yes sir, if that is the answer.

Sen. Mozingo: Let me ask you this: I don't want to delay the thing, but your main real objection to the situation, and your main idea for the passage of the bill is that this situa-

tion gives your competitor an advantage over other morticians?

Mr. MacDougald: No, sir. My main objection is that the public is in jeopardy when it comes to buying a funeral. That has been proven beyond a shadow of a doubt.

Sen. Mozingo: Do you have any situation in South Carolina—any funeral director that you can point to who has been abused or mishandled or can you show in any way that the public has been jeopardized by this gentleman operating in South Carolina?

Mr. MacDougald: In South Carolina?

Sen. Mozingo: Yes.

Mr. MacDougald: Mr. Mozingo, frankly, I don't know of any operating in South Carolina.

Sen. Mozingo: Well, if you know of none that are operating; then just as a safety you would have no objection if there was one operating or allowing him to continue?

Mr. MacDougald: Divorced from the funeral business, yes.

Sen. Mozingo: If they are not operating, what is the objection to the passage of the bill? Why don't we wait until one crops up?

Mr. MacDougald: Other funeral directors have been called on to align themselves with this. There has been a definite overture made to get them into the mortuary insurance business.

Sen. Mozingo: As far as you know, there has been no abuse of any policy holder or individual in South Carolina as of now?

Mr. MacDougald: None except the one I mentioned to you that went to Georgia.

Sen. Mozingo: And that was by a Georgia concern, and of course, which we have no control over?

[fol. 135] Mr. MacDougald: Yes sir, it was not abused. It was mere ignorance on the part of the policy holder, and that is what will prevail on the part of 95 percent of the policy holders with this.

Sen. Mozingo: Well, if the policy holder doesn't want to buy it looks like the fellow selling that type of insurance would automatically have to go out of business?

Mr. MacDougaald: People will buy anything. That brings me to this conclusion, gentlemen, if I may: I said in the outset that I am a mediocre or small operating funeral director, or small in comparison to some in this state. I have

built my business from the ground up, built it on good service, fair dealing, and an Honest-to-God desire to serve the people. If this bill is not passed, and insurance companies are permitted to sell their insurance through funeral homes, collect premiums, that I have done in the last 15 years will be stricken from the record almost as you would a slate. It would become a matter of insurance. The man that can sell the most insurance policies will get the funeral business. It wouldn't be a man trying to be of sincere service to the people. I am going to reveal something that I venture to say that I know more about the actual operation of burial insurance than any man save one in this crowd, and he is, as I understand it, an actuary. I have owned two burial leagues in my lifetime. I have operated one and have been a stockholder in a company exactly as this company is patterned after. And, gentlemen, it isn't the best thing for the public or the funeral directors. I don't have any stock in any burial league today. I got out of my own choice.

Sen. Mozingo: What state was that in?

Mr. MacDougald: Georgia, and North Carolina. We are 14 miles from the river. Hartwell is 7 miles beyond that. We had two burial leagues at one time and a family fund insurance company which is the original which I understand that this proposed company is copied after, and we had another, the Coastal States. They were allotted through the [fol. 136] funeral directors, and we are as close or closer than many of the funeral directors on the North Carolina line who are for this insurance thing. It is a solution for that condition. The man that fought this the hardest at the last hearing said he lost maybe six funerals a year to it. We lose that many or more, but having operated both, I am convinced it is better for him to lose those 6 funerals than it would be to indulge in insurance practice. Thank you.

Chairman Mars: Who will speak next?

(Senator Abrams of Newberry called.)

Sen. Abrams: Mr. Chairman and gentlemen of the committee: I am just a small undertaker. I have been in business 45 years, and I run my business in connection with other business. I want to say in the very beginning I am a merchant, a small farmer, and I am a Senator from Newberry County. Now, primarily, this bill seeks to divorce the insurance field from the mortician or from the undertaker,

and I am in favor of this bill for two reasons. Primarily, I think that the person who needs the service of an undertaker will be benefitted by not having this insurance feature with the undertaker. Back in 1934 when I came to the legislature for the first time we had in this state what is known as burial associations, and which gave one undertaker several hundred customers. They pay him a small amount and he promised to give them a certain type of funeral. Well, of course, this is different to this extent. As I understand this proposed plan will pay off in cash. The other type did not, but paid off in funerals. We outlawed the funeral association and it has been in adjoining states. They still have these burial associations. I run near to them sometimes, but we are not troubled much with them in South Carolina. Gentlemen, as an undertaker by inference we know that if I have a number of customers to whom I have sold insurance, if they need the service of the undertaker they are coming to me in preference to anyone else. There is no question about that. They will come to my door, and they are going to expect me to furnish the funeral arrangements.

[fol. 137] You might say that is all right. I don't know if it is or not. I think it is far better for the insurance companies to get all of the insurance. It is not necessary for us to have these burial agencies. We have these insurance agencies who handle all types of insurance, and I never have experienced any trouble in collecting undertaker bills from them. They all carry insurance so why should we tie these people to a certain place and force them to come and get their service. The second reason is this: While I have been an undertaker for a good many years in a small way if you permit this insurance to be put into effect it means that I am going to have to go out of business because I am in a small town and I cannot afford to put in this set-up or go into the insurance business in order to continue my undertaking work so I am going to have to go out of business and so will quite a number of other undertakers. You will have very few in the state. They will write the insurance and the small undertaker will have to get out of the game and, gentlemen, that is one reason I am in favor of this bill, and I hope you will consider that seriously. Thank you.

Chairman Mars: Mr. Ward will speak next.

(Mr. R. N. Ward called.)

Mr. Ward: Mr. Mars, and members of the committee: I only want to make a very few remarks. Mr. MacDougald and Senator Abrams have fully covered the field. One of the most sacred obligations I know is the right of a widow or her children to select the undertaker of her or their choice, to have charge of the funeral of her husband, or father, whichever the case may be. Now, what is the proposition that this bill proposes to outlaw? It is an effort on the part, not of the insurance companies, but an undertaker who proposes to go into the insurance business and has bought out or buys an insurance company for the purpose of selling burial insurance and for the purpose of forcing all other undertakers into the insurance business. Now, how will that force them into the insurance business? Well, here in Greenville there are three undertakers. In Anderson two or three, and in Spartanburg two or three, and in Columbia [fol. 138] perhaps more. Now, if one of those insurance undertakers decide "Well, these others will try to take advantage of the situation and go into the insurance business" and they go out here and solicit the whole town and try to sell them this burial insurance. All right, here is your insurance policy. Their name stamped across there in big letters. A rider attached to it showing that your insurance premiums have to be paid at a particular undertaker's office. So every week or every month the insurance policy holder goes to the undertaker's office and pays his bill. All right, when he dies then the widow is under obligation. She gets out the insurance policy and looks at it. That is such and such undertaker stamped across there. Most of the people who take this industrial insurance are not lawyers, and doctors, and professional men. They are the cotton mill people and the colored people of the state. They are ignorant of the situation. The great majority of them will not understand that they have a right to demand the cash and to select the undertaker that they want. Just as those intelligent people that Mr. MacDougald mentioned down there. They thought that they had to go into Georgia and get an undertaker because in big letters across the policy his name was stamped and they didn't know they could get it anywhere else. Now, you will find that 90 percent of the people who take this kind of insurance will have that feeling about it. Now, an undertaking business is a professional business, the same as a doctor or lawyer, and they want to handle their business in as high a type manner as

the lawyer would handle his business. Now, what would the lawyers think about some lawyer getting out of his office or getting agents to go out and canvass the whole community for people when they get into a lawsuit. People expect to come to a particular attorney and retain him to handle their work. Now, the Senator asks a question about had there been any abuses. My understanding is that there hasn't been time because they have only been selling this for 30 or 60 days, and also the undertakers of South Caro-[fol. 139] lina had come together and opposed going into the insurance business, and they felt that it was just a method to force the undertaking business into the insurance business. Now, they propose to pay 5 percent for writing the insurance. The undertaker has to get his agent to solicit the insurance and they propose to pay 5 percent. You take the Metropolitan, Carolina Life, and Liberty, and dozens of other insurance firms, and my understanding is that they pay 50 percent merely for writing it, and 15 percent on up for collecting the premiums from week to week or from month to month. Now, you have got there a very large margin between the five percent that this insurance company will pay out and what the other legitimate insurance companies are paying. So you have got the undertaker underwriting this particular insurance company—not the insurance companies in general, but this particular insurance company. What is the result of it? Somebody has got to pay the bill. If the undertakers underwrite it, they have got to add it on to the funeral bills. They can't absorb it. They would shortly go into bankruptcy. The undertakers of South Carolina, 90 percent of them or more, I would say, are absolutely opposed to this bill and the only way they can protect themselves is for this or a similar bill to be passed. Now, the question was asked about exempting a particular company. Well, that company as I have just pointed out was organized long after the undertakers of South Carolina in meeting had decided against going into the insurance business. As I understand it, Mr. Chairman, we will have a few minutes of reply so I will stop now.

Mr. Johnson: Is it your idea that because some of the undertakers don't want to go into this business that they have a right to tell other undertakers that they can't go into this business?

Mr. Ward: I don't think anyone has the right to tell another that they have no right to do anything, but the legis-

lature of South Carolina has that right, and the South [fol. 140] Carolina Supreme Court and the United States Supreme Court has held that the legislature has a right to regulate insurance companies when it is for the common good of the people, and we submit, Mr. Chairman, that this is. This is for the common good of the people in this state.

Mr. Johnson: May I ask one or two more questions? Did I understand you to say that the undertaking business was a profession?

Mr. Ward: Yes sir.

Mr. Johnson: You say it is a profession?

Mr. Ward: It certainly should be.

Mr. Johnson: I didn't ask you if it should be. Did I understand you to say it is today?

Mr. Ward: Yes sir, the South Carolina undertakers are trying to conduct it as a profession.

Mr. Johnson: What are the requisites for this profession under the laws of South Carolina?

Mr. Ward: Honesty and fair dealing are the principal requisites and I know of no business that requires a higher type dealing than does the understakers' business.

Mr. Johnson: Those requisites would stand in pretty good stead in most other businesses, wouldn't they?

Mr. Ward: Yes sir.

Mr. Johnson: Other than that you don't know of any other requirements to be an undertaker in the profession you are referring to?

Mr. Ward: Well, most anyone who has money enough to start out and buy an ambulance and other paraphernalia that is needed.

Mr. Johnson: Do you believe that permitting one mortuary company to write insurance, legal reserve life insurance, gives it a competitive advantage over another mortuary to the extent that the other mortuary would also have to go into the insurance business?

Mr. Ward: I certainly do for this reason: Take in your [fol. 141] county, Spartanburg with all those mills, with one undertaker in that business going out and soliciting all those mill people getting them to take a policy with the company's name stamped on it, when the man dies just as Mr. MacDougald pointed out, would feel obligated to that particular undertaker and 90 percent of the class of people

who take this insurance will be ignorant of the fact that they can demand the cash and go to the undertaker that they want to.

Mr. Johnson: And that is the competitive advantage which it would give?

Mr. Ward: That is right.

Mr. Johnson: Now, there is no way that you know of that the mortuary writing this insurance policy can compel a man to take that policy during his lifetime, is there?

Mr. Ward: Why certainly not, no more than any insurance agent can compel another one, but they would have great influence. A shrewd agent on writing a policy of that kind can make an appeal to ignorant people that will cause them to feel they have got to take that insurance to protect themselves.

Mr. Johnson: Are you registering any great complaint to the fact that you say that this insurance company only pays 5 percent to the mortuary for collection? Is it your idea that that commission should be more?

Mr. Ward: If the mortuaries are to be forced into the insurance business, certainly the percentage of the premium allowed to the mortuary as a commission should be equivalent to any other insurance company in the state and/or sufficient to cover the cost of the undertaker in selling and collecting the premiums. Certainly the insurance company should bear the expense of it.

Mr. Mozingo: Mr. Ward, right there, don't you think it would be better for the morticians to give the reduction to the people taking insurance. In other words, if there is a leeway between the way they are selling and the way the [fol. 142] insurance company is selling, don't you think it would be better to give the policy holder the benefit of that reduction?

Mr. Ward: I certainly do.

Mr. Mozingo: Do you have any insurance? The insurance they are now selling, does it cost any more than with a regular insurance company?

Mr. Ward: I don't think it would cost any more.

Sen. Mozingo: Then the insurance companies are making a bigger margin of profit than the insurance company that is handled through the undertaker?

Mr. Ward: I don't know, Mr. Senator of my own knowledge, but if that is true, this committee, Mr. Chairman,

knows that companies like the Metropolitan and Carolina Life and Liberty will at least be able to meet their obligations. So after all, you will have the underwriters underwriting this particular insurance company.

Sen. Mozingo: Looks to me like that would be a good thing to make companies come down on the premiums. I am looking out for the mill boys, as you say. That is my crowd. Looks to me like if we can force the insurance companies to come down then we have rendered a service to the people in the State.

Mr. Ward: I think that is true, Mr. Senator, if you want to force the undertakers into a cutthroat busine s.

Sen. Mozingo: I don't want to force you into anything, but I want to see keen competition, and I don't know of anybody who needs it as much as insurance companies.

Mr. Ward: If the insurance companies of South Carolina are collecting too much premium, then I think our Insurance Department should investigate it and see that the premiums are reduced.

Sen. Mozingo: Now, you are speaking on my side.

Mr. Ward: I think that is the way to handle it, and not let one insurance company get millions of dollars beforehand.

Sen. Mozingo: Mr. Ward, will you state what firm you are with?

[fol. 143] Mr. Ward: R. N. Ward, Attorney. I represent my son-in-law, Thomas F. MacAfee who is in the mortuary business.

Chairman Mars: Mr. Ward, you have ten more minutes.

Mr. Ward: We would like to save it for reply.

Chairman Mars: We will hear the opponents of the bill now.

Mr. Turner: Just a minute. I am Nat Turner. I want to testify. I came up here primarily because I heard my name called, and it seemed to be in connection with trying to limit the scope of my practice. As little as it is now, I don't want to limit it any further. I am talking about my practice, not my girth. Mr. Chairman and gentlemen, I represent the Carolina Life Insurance Company, and probably would not have appeared voluntarily here were it not for the fact that in the House when this bill was being considered in that body the statement was made that the insurance companies did not favor the passage of this bill. That was the impression given by one of those who spoke. The

Carolina Life Insurance Company being in the industrial and life insurance business, and having been in that business for something over 40 years, at least someone connected with it has some fair knowledge of the business, and I am here to say that that company certainly is in favor of the passage of this bill. Now, we hope that that position upon our part is not actuated solely because of the monetary gains that we might receive over a period of years by keeping one more insurance company out of business. I heard a charge from the gallery in the House that this was an insurance bill promoted by the insurance companies behind the mortuaries or that portion of them that are prompting it which I doubt. Certainly, that is not true of the Carolina Life Insurance Company. It has not taken any active part, knew nothing about the promotion of the bill, or its introduction until it had actually been in the hopper of the General Assembly, but I do say, I started to say rather, that in the House it was charged that the insurance companies wanted a monopoly. I forget how many insurance companies are writing insurance in South Carolina, [fol. 144] but they run into the hundreds and one more would not keep it from being a monopoly if it is now a monopoly, and I hope that is not our purpose in coming before you here today. The relationship between the Carolina Life Insurance Company and the other companies are, I believe, in the main and in the whole, very fine. The relationship is cordial. I don't believe there is any strife between them. The Carolina Life Insurance Company, however, believes that it is a mistake to have it possible for the benefits of the insurance policy to be channeled to its source as would be the case in the set-up which, we understand, these gentlemen are anticipating, and what we understand this bill is introduced to stop or alleviate. That is our position on it. We don't attempt to tell the legislature what to do. We do think that the bill if not passed, or without the bill, that this state might get into the position that has been the experience in some other states where the undertakers engage freely in the writing of insurance, and I think it would be bad, very bad. I believe from my experience, and from my information, that the experience in those states is that it is bad. If that would remedy it, and would keep it from happening in this state, I think it would be a fine thing to make it law. Other insurance companies have

stated they are in favor of the bill's passage. Mr. Walker who represents the Capital Life company says that I might say the same thing of him. I understand that the agents of our company have expressed favor with the bill and disfavor with the idea of the business being written through undertakers and through mortuaries directly, and have expressed their favor of the measure. I thank you very much gentlemen, for giving me your time.

Mr. Tyson: What percentage of business that insurance companies write annually is lapsed? For instance, your company will write 25 million dollars new insurance for the year 1947. How much would you lapse in the same period.

Mr. Turner: A great percentage of it. My experts say 50 percent.

Mr. Tyson: Don't you think that an undertaker acting [fol. 145] as an agent for an insurance company would be more interested than the agent of the company in preventing lapses of the policy?

Mr. Turner: No, I don't think so. The agent has every incentive in the world to write the business and keep it on the books. He builds in his reserve account a very substantial amount running from 20 to 25 times the weekly premiums, but when that business lapses, it is taken out of his account.

Mr. Tyson: Don't you think an undertaker is more interested in seeing that a policy is paid than an insurance agent?

Mr. Turner: I can't conceive why, unless, and I think that is the thing most objectionable, and that is that the man is going to get the money himself, and whatever loss he may have had, he will be in a position to recoup it at that time. Outside of that, I see no reason why an undertaker should want him to pay it any more than an insurance company.

Mr. Tyson: That is one reason, the undertaker would know about it.

Mr. Turner: How could he keep from knowing it. How could the assured or the assured's family under any circumstances keep from knowing it.

Sen. Mozingo: Mr. Turner, your board of directors, they are the people that manage the insurance company, are they not?

Mr. Turner: With the help of the legislature, and the Insurance Department.

Sen. Mozingo: Do you have anybody on the board engaged in anything besides insurance? What are some of the occupations of people of the Carolina Life?

Mr. Turner: I don't believe any of them do anything else. I am sorry, one does, Mr. D. M. Haltiwanger is a member and is connected with the Richtex Brick Company.

Sen. Mozingo: That is not the Haltiwanger merchandising family?

Mr. Turner: No sir.

Sen. Mozingo: Who else do you have on your board of directors?

[fol. 146] Mr. Turner: Mr. A. B. Langley. Mr. Arthur Langley who is the head of the Ordinary Department, Mr. Ames Haltiwanger, Mr. D. M. Haltiwanger, and Mr. Harbison who is in the cost.

Sen. Mozingo: Well, now all of those gentlemen are full time insurance men. They don't engage in any other business such as owning stores or are bankers or anything like that?

Mr. Turner: No sir. Mr. Ames Haltiwanger is on the board of directors of the Citizens and Southern Bank.

Sen. Mozingo: Don't you think he ought to give his full time to the insurance business?

Mr. Turner: As a matter of fact, I don't think Mr. Haltiwanger does much about running the bank.

Sen. Mozingo: Don't you think that is a little unfair when he is on the bank's board of directors? When you want to borrow money to build a little eight or nine million dollar building like that one over on the corner out there, that gives him an advantage to take it to his bank, doesn't it?

Mr. Turner: As a matter of fact, the board of directors control that.

Sen. Mozingo: Would you object to an amendment on this to put everybody in one business—No director of any insurance company or anybody employed by any insurance company or affiliated therewith shall be engaged in any other business?

Mr. Turner: I don't think I would be in favor of that, and I don't think I would be willing if I had the right to say, but I will say this: That it would be fair if you said they should not be allowed to engage in the undertaking business

or any other business where the funds from these policies by reason of that occupation would be controlled or channeled before it was disbursed.

Sen. Mozingo: Isn't it true that Carolina Life rents office building space? Don't you think that is a little unfair to Creason & Company?

Mr. Turner: No sir, I don't.

Sen. Mozingo: You don't think that is unfair. It is all [fol. 147] right for you to be in that. Wouldn't you object to a bill that said you would have to quit renting office space, and not go into any kind of business like that?

Mr. Turner: As a matter of fact there are a great many restrictions imposed by law on insurance companies and not on other businesses.

Sen. Mozingo: Yes, but don't you think——

Mr. Turner: As a matter of fact, it is an entirely controlled business. A certain percentage of every premium dollar must be put up in a certain type of reserve, and that reserve is put up with them. No private business has to do that. We are regulated pretty carefully. As a matter of fact, the Insurance Department says how much money in buildings we can have, and within the last three years, certainly within the last five years to my knowledge, the insurance company was required to reduce its stock in real estate.

Sen. Mozingo: Let me finish my question.

Mr. Turner: Go ahead, but I make my living like you do. I just keep talking to keep you from asking questions.

Sen. Mozingo: Mr. Turner, it is true, however, that life insurance companies, or insurance companies, do own a great many other things and engage in other businesses other than insurance? They own quite a bit of radio station WIS, don't they?

Mr. Turner: I don't know about WIS.

Sen. Mozingo: You have heard of WIS FM on the radio here in Columbia, haven't you?

Mr. Turner: Yes, but I do not know the ownership of it. I know that WCOS was organized, and that some of the officials of the Carolina Life Insurance Company had stock in that company, but the insurance company itself did not.

Sen. Mozingo: Are you familiar with any of the directors of the Liberty Life Insurance Company?

Mr. Turner: No, but I have heard of some of them. I

[fol. 148] know Mr. Frank Hipps and B. M. Edwards are on it.

Sen. Mozingo: Now, Mr. B. M. Edwards by occupation is a banker, and of quite a large one?

Mr. Turner: I am willing to admit that if you are.

Sen. Mozingo: Mr. J. B. Williams, isn't he on the board?

Mr. Turner: I really don't know.

Sen. Mozingo: In other words, you wouldn't deny that he is on the board?

Mr. Turner: No sir.

Sen. Mozingo: Let me ask you this: I understood from you just now that as far as the operation of an insurance company, it is just practically impossible for them to operate in any manner to the detriment of the policy holders because of the laws of this state?

Mr. Turner: I think in theory that is exactly the set up. You fellows sometimes convince us that in practical matters that doesn't work out.

Sen. Mozingo: So then if this company has been licensed by the Insurance Commission of South Carolina then they are supervised just as closely, and there is no way for them to damage a policy holder any more than any other company?

Mr. Turner: I have no idea that they ever intend to do it, and, certainly, I have not intended to make such a statement, but I say this: That the thing wrong with what they are trying to correct by this bill, as I understand, is to avoid a situation where the man who is finally going to take the money having it channeled to where he has any kind of control over it. I don't know that they will do that. I do remember that one of the gentlemen of Mr. Floyd's company said that they have in their by-laws a provision that the insurance company shall not own a mortuary so there must be something in their mind to cause them to feel it should be divorced.

Sen. Mozingo: Talking about channeling the money, doesn't your insurance company and other insurance companies write a certain type of policy to secure a loan, and you make that payable, for instance, to a mortgagee? [fol. 149] Don't you write a type of policy like that?

Mr. Turner: Yes sir, and reduce it as they pay the mortgage.

Sen. Mozingo: And that is channeling it?

Mr. Turner: Yes sir, but the man making the loan don't necessarily have a right to fix the amount. The amount of that loan is fixed. In this policy, the minute you change it so that the amount of the burial is fixed in the burial insurance, then you have something that all of them agree shouldn't be—paying off in merchandise or something of that character.

Sen. Mozingo: If this pays off in cash, and does not exceed a certain amount, that would, of course, answer your channeling objection?

Mr. Turner: I will say that the man who gets the policy is the man who gets control of it just before it gets loose. Thank you, gentlemen.

(Mr. J. G. Floyd called.)

Chairman Mars: State who you are and where you live?

Mr. Floyd: J. G. Floyd. I operate the J. F. Floyd Mortuary in Spartanburg. The firm has been in business for the past 62 years without interruption. That business has withstood depressions and periods of high times, and whatnot, for 62 years for one reason only, and that is the reason that it gave its clients the best for the money, and they were satisfied. That is the reason that I want to go into the insurance business now—to provide them with an easy low-cost method of paying for funerals. Regardless of what my friends have said, if you will take a map and look at the United States as a whole, and go into this thing, you will see that burial insurance or insurance sold through mortuaries, whatever you want to call it, in some form or another, is sold in 30 states. You can't convince me that 30 states, or that the people of 30 states, would be that stupid to be taken in for all these years if they didn't get their money's worth. I have had a charter owned jointly with [fol. 150] Mr. Arthur Mackey of Greenville. Unfortunately, Mr. Mackey is ill—has been ill for over a year now, and can't be here today. But we have had this charter, keeping it until the time was ripe, and until we could go into the insurance business as it should be done for the best interests of the public and for the funeral directors, too. I personally have studied this thing for a period of between 9 and 10 years. I don't propose myself as an authority, but I think I know as much about it as anybody else does, and I for one will not be any party to any racket or to anything that, in any way takes unfair advantage of the public. Had we

done so at home, the Floyd Mortuary would have been out of existence long ago.

Mr. Tyson: Explain to the committee, Mr. Floyd, what delayed you in perfecting your organization, and the investigation that you made before setting it up? I ask you that, particularly, in view of the statement by some of the gentlemen here that you have only recently begun your operations. What delayed it? And what investigation did you make?

Mr. Floyd: I had followed the operation in any number of states and I have traveled 48 states myself, rather 40 states, investigating this thing as it progressed in those different states in the different forms. My period of investigation was interrupted by World War II. I volunteered and served practically four years in the Service, and during my period of service in the Army, or my Army career if you call it a career, I was looking for a man that could go into this thing with me and operate it for me and my associates. While I was stationed in Atlanta, I met Mr. Charles Hoenig who I learned to know and respect very highly. In fact, I thought he was the smartest boy that I had seen in the Army.

Mr. Ward: Could the gentleman speak louder?

Mr. Floyd: My voice doesn't carry very much. I am talking very high for me as it is.

Mr. Tyson: All right, you had started to talk of Mr. Hoenig. What experience had he had, and what was his [fol. 151] work at the time you first discussed this matter with him?

Mr. Floyd: At the time that I first discussed this matter with him, he was employed by the War Assets Administration in Washington. I knew him as a business consultant and a managerial specialist. I told him that I had a problem that I would like for him to study and to see what he thought about it. In other words, if he agreed with me, or if he disagreed with me. So he went to work on his investigation. At that time I took a trip out to California and Sun Valley, and all out around the West Coast. They have quite a few insurance companies out there. They are operated by funeral directors and some not operated by funeral directors so I wanted to study their operations and see what affect they had. While I was in Los Angeles, I talked to a firm there, and they asked me to represent them in the State of South Carolina, and during the course of the conversation, this fellow said, "You have got one of the

darnedest punitive damage laws in South Carolina of any state I have ever seen. That surprised me because I had no idea that anybody in California would be interested in the funeral business in South Carolina, but when he told me about the punitive damage law, I could see right then and there that he had made a study of South Carolina because our punitive damage law in my opinion is bad. So I came on back home. I came on back to South Carolina, and upon investigation, I find that other companies are going to do the same thing. So we have this charter that has been in our possession for approximately ten years, and we find out that other companies are soliciting funeral directors, and that they are going into the funeral insurance business, too. So then I talked to Mr. Hoenig, and he makes his report back to me that he thinks that is the only thing to do. So then we start off. Now, I don't know why they say it is my company except that I probably was the prime mover, but [fol. 152] I just want you gentlemen to know that there are 30 some odd stockholders in that company, and that approximately $80,000 hangs in the balance on your decision as to what you are going to do—whether you are going to close this company up or whether you are not going to close it up, and that is to say nothing of the insurance policies that we have issued, and the people who have paid in their money. Those people have a vested right in this proposition.

Mr. Tyson: How many policies have you in force?

Mr. Floyd: We have in excess of 500 to 1,000 I would say.

Mr. Tyson: And how many agents have you?

Mr. Floyd: We have 60 some odd.

Mr. Tyson: How many men are employees who devote their entire time to it and who would be put out of a job and out of work by this bill?

Mr. Floyd: Twenty some odd. I don't know the exact number. Mr. Hoenig can tell you later.

Mr. Tyson: What experience has Mr. Hoenig had in actuarial work and business generally? What is his background?

Mr. Floyd: He has, of course, he is a college graduate; he also finished the Harvard Business School of Management, and he has given some time to the study of insurance and just how long I cannot tell you. He is a qualified man and if you don't believe it, you can ask him when he gets on his feet.

Mr. Tyson: When the committee was writing the present

insurance code of South Carolina, did you have any business with that committee and make any suggestions to them?

Mr. Floyd: Yes sir, I did.

Mr. Tyson: Don't go into detail, but just give us the highlights. In as brief a manner as you can.

Mr. Floyd: In other words, I knew they were rewriting the insurance code last year, and I called the president of the Funeral Director's Association asking him if he was doing anything to see that our interest was taken care of, and he said, "no," and that he didn't know anything about it so I said, "If I were you, I would look into it," but anyhow on my own initiative I had my own attorney [fol. 153] to come down here to Columbia and appear before that committee and straighten out a clause because, as I recall, it did not provide, or prevent, rather, anybody from writing insurance which paid off in merchandise. In other words, I was more concerned than anybody else last year, and I am always concerned when it affects my business, and, of course, it was through the efforts of my attorney and myself with the concurrence of the committee that that clause was put back in there, and it was so done. I think Senator Baskin will remember my trip down here and also Senator Kearse.

Mr. Tyson: Does the policy that you now write pay off in merchandise?

Mr. Floyd: No sir, I am definitely against that and will fight that as long as I can.

Mr. Tyson: Is your company now a legal reserve company, the same as the other companies that Mr. Turner was talking about?

Mr. Floyd: Yes sir. Our company is a legal reserve life insurance company. Our policies are no different from any of the others.

Sen. Wallace: How do the rates compare per thousand?

Mr. Floyd: They are comparable to the others. We think we are a little cheaper. Our rates have been approached by the insurance actuary.

Sen. Wallace: Is it stock or dividend?

Mr. Floyd: A stock company.

Sen. Baskin: How long have you been writing policies?

Mr. Floyd: Of course, we have written policies way back yonder. We have become more active since the first of the year, however.

Mr. Tyson: How long did you investigate this business before you went into it?

Mr. Floyd: Between nine and ten years.

[fol. 154] Mr. Tyson: And for the past year or thereabouts just the highpoints now, what investigation did you make, and what did it cost you before you became very active in the business?

Mr. Floyd: I would say my investigation and everything it cost me in excess of $10,000 to know what to do and when and why.

Mr. Tyson: Did that include the employment of an actuary?

Mr. Floyd: Yes sir.

Mr. Tyson: Your stockholders up to now are made up of what class of people?

Mr. Floyd: Funeral directors.

Mr. Tyson Do you confine your agencies to funeral directors?

Mr. Floyd: Up until now it has been confined to funeral directors as agencies. However, we have people who want to represent us who are not funeral directors. They have requested that of us. Instead of we going to see them, they have come to us.

Mr. Tyson: Mr. Floyd, in the operation of your business, what in your judgment would be the difference in the attitude of an agent who is a funeral director and the ordinary agent in regard to the collection of a premium, I mean, in the collection of a policy at the death of a policy holder?

Mr. Floyd: Certainly, a funeral director should be more interested in seeing that all claims are paid because he has to be paid and naturally he would have more interest to see that that policy was paid. Now, this happens to me quite frequently, and no doubt it happens to other funeral directors, too, and we have people who come in there and say, "Mr. Floyd, we don't have any funds at all." "We used to carry insurance, but we dropped it." People are not insurance wise, and because they don't pay on a policy for the last 30 days, they think that policy has been lapsed even though they have carried it 5 or ten years. Nine times out of ten they throw the policy away or let it get away from [fol. 155] them because they thought it had no value. A case like that arose where the policy was taken out with the funeral director, he could immediately check his record and say, "Yes, Mrs. Smith, you have a policy on your husband

that is good even though you haven't paid on it for a year or two years or maybe five years because you have an automatic extended coverage on your policy that you didn't realize, and even though you don't have the policy in your possession today, we will see that that policy is collected for you. That is just one of the many things that will operate to the advantage of the public if it is handled through the funeral directors. Another thing that it does, it prevents or discourages overspending. A person comes in and takes out a policy, and that is more or less earmarked for burial expenses, and he gives that policy to his wife and says, "When I die I want you to bury me with this policy. I don't want you to go there and overspend." It won't let your sentiment run away with you. This burial policy or whatever you want to call it will have a tendency to discourage overspending on the part of emotional people.

Mr. Tyson: What effect on insurance, generally, will the operation of your company have in your opinion?

Mr. Floyd: Anything that should increase the cause and stimulates interest certainly will not hurt it. Nobody will refute the fact that the insurance companies haven't done exceptionally well all the way through and, as I say, this plan or a similar plan is operated in 30 states, and that is a big part of the United States, and it certainly hasn't hurt them. If anything, it has helped them. Now, here is something else, and this is a very important factor, that most people don't realize; I am quoting statistics issued by the Funeral Service Survey out of Chicago, and they say the national average that 86 percent of the people carry insurance today, but that at death only one out of six funerals are paid by insurance. I was startled when I saw that, and I have since made some comparisons myself in Spartan-[fol. 156] burg, and the most I have ever gotten in insurance paid funeral bills was 35 percent so that something happens there between the 86 percent and the 16⅔ percent. Just what it is, I don't know.

Mr. Tyson: Something was said about Alabama. Have you a letter, and is this the letter from the Department of Commerce of the State of Alabama?

Mr. Floyd: Yes, sir, it is.

Mr. Tyson: Will you read it please to the committee?

Mr. Floyd: "This will acknowledge receipt of your letter of February 21, and in reply thereto, I wish to advise that the funeral insurance has served a wonderful purpose

in the state of Alabama, and has rendered a very valuable service to our citizenry which we trust is the information you desire."

Mr. Tyson: Will you read this letter from the Board of Insurance Commissioners of Texas?

Mr. Floyd: "In response to your letter of March 31, the answers are given in the order as presented. There are several funeral homes operated in the State of Texas in conjunction with reserve life insurance companies." Do you want me to read the questions?

Mr. Tyson: No, sir. Have you a similar letter from the insurance commission of Georgia?

Mr. Floyd: Yes sir.

Mr. Tyson: Will you read that?

Mr. Floyd: This is a letter from the Insurance Commissioner in the State of Georgia. "This will acknowledge your letter of March 3. You ask particularly about the Family Fund Life Insurance Company, and their mode of operation." We will operate similar to them. Not exactly, but first cousin. The letter goes on to answer my questions: "Do you see any objection to the operation of a company of this nature? "My answer to this question is no. "In your opinion has this company provided a service to the public? "My answer to this question is yes." "Can you think of any reason why a person connected with [fol. 157] a funeral home should not be permitted to sell legal reserve state supervised life insurance for providing cash payments to a beneficiary? "My answer to this question is no."

Mr. Tyson: Have you other similar letters from Mississippi and a number of other states?

Mr. Floyd: We have letters from a number of states, and they all say the same thing.

Mr. Tyson: What is the maximum that your company writes any one person?

Mr. Floyd: The maximum we write is $750.

Mr. Tyson: I have no other questions.

Mr. Ward: I would like to ask a question: Mr. Floyd, if I understood you correctly, I was sitting back there at the time you said there are 30 states undertaking to sell insurance?

Mr. Floyd: Yes sir.

Mr. Ward: And several states have passed laws prohibit-

ing insurance companies from dealing in the undertaking business, and vice versa, similar to this bill?

Mr. Floyd: I know of only one.

Mr. Ward: What state is that?

Mr. Floyd: Florida.

Mr. Ward: Now, you say that you have had your charter for ten years?

Mr. Floyd: Yes sir.

Mr. Ward: Isn't it true that three years ago that you and Mr. Mackey considered organizing a similar company to this and that the undertakers at that time of the state came together and as a result of the opposition to them you decided not to organize the company?

Mr. Floyd: That is partially true. I was in the service. Mr. Mackey and a few did start to organize a company but it was not discontinued entirely because there was opposition in the state. It is my understanding that the boys who were going to operate it were offered more money where they were formerly employed, and they stayed on those jobs.

[fol. 158] Mr. Ward: Isn't it true that recently you purchased a charter of an old company that had been organized for about seven years, and you are trying to operate through that?

Mr. Floyd: Recently, you said?

Mr. Ward: Comparatively—in the last year?

Mr. Floyd: No sir.

Mr. Ward: When was it you did that?

Mr. Floyd: Ten years ago.

Mr. Ward: You have owned that company for ten years?

Mr. Floyd: Yes sir.

Mr. Ward: From whom did you purchase it?

Mr. Floyd: I really can't tell you off hand to save my life, but I can give it to you later.

Mr. Ward: Isn't it true that you started this business in order to try to combat Brown of Alabama who was in the same business down there from coming into South Carolina?

Mr. Floyd: Yes sir, we want to combat any competition. We don't care who it is.

Mr. Ward: You want to write all the insurance yourself?

Mr. Floyd: I think your question is leading. I don't want to write it all myself. I want to make it possible for those who want to come in to do so. Let me say this: The

South Carolina Funeral Directors and Embalmers Association did not have a meeting on this thing—not state wide at all. In other words so far as they are concerned, it is a fight among a few funeral directors, and the association as a whole has not taken any action at all.

Mr. Ward: Do you mean the state association didn't have a meeting here in Columbia on it and discourage it?

Mr. Floyd: No sir, not recently. Now, what happened while I was in the Army, I don't know.

Mr. Ward: It was some 3 years ago?

[fol. 159] Mr. Floyd: I can't tell you because I was not here.

Mr. Ward: Isn't it true that this man Brown you speak of from Alabama was a small undertaker down there, a little man with a small business, and he organized this company similar to yours and in a short time he was worth millions of dollars and owned considerably more than 50 percent of all the undertaking establishments in the State of Alabama?

Mr. Floyd: His name is not Brown.

Mr. Ward: What was his name?

Mr. Floyd: There is a Mr. Lackey who was the man who put it over. He put it over through an insurance company.

Mr. Ward: Isn't it true then that Mr. Lackey organized this insurance business in the State of Alabama and in a very few years he had accumulated millions of dollars, and owned more than 50 percent of the mortuaries in the state?

Mr. Floyd: That is correct.

Mr. Ward: And if your company is allowed by the State of South Carolina to go ahead as you propose, isn't it true that in a few years you can own the majority of the undertaking establishments in South Carolina?

Mr. Floyd: No sir, that is not true.

Mr. Ward: Why?

Mr. Floyd: For the simple reason that the funeral directors own the company. The company doesn't own the funeral directors, and I will tell you this: This is why I am interested in the thing—because the funeral directors that have maintained their independence in the State of Alabama are the ones that operate their own companies. All the rest of them were taken over by the insurance companies. That is the same thing that happened in Tennessee.

Mr. Ward: That is it. In other words, the insurance companies went into this business, and monopolized the

undertaking business in a short time, and isn't it true that already you yourself have practically monopolized the undertaking business in two counties?

[fol. 160] Mr. Floyd: No sir, that is not true.

Mr. Ward: Don't you operate the only insurance undertaking business in Union County?

Mr. Floyd: I really can't answer that.

Mr. Ward: Do you know of any other undertaking business in Union County?

Mr. Floyd: I don't know if Mr. Abrams is in Union County or not?

Sen. Abrams: No, I am in Newberry.

Mr. Ward: I am asking if you know of any other undertaking business except yours in Union County?

Mr. Floyd: I will put it this way: I don't know if Jonesville is in Union County, but there is a funeral director in Jonesville, yes sir.

Mr. Ward: Isn't Jonesville in Spartanburg County?

Mr. Floyd: No sir, I think it is Union.

Mr. Ward: Then you have them all but one in Union County. Isn't it true that you own the oldest and perhaps the largest undertaking business in Spartanburg?

Mr. Floyd: That is true.

Mr. Ward: And if I understood you correctly, since the first of the year, 3 months today, you have been operating, you have sold between 500 and 1,000 policies?

Mr. Floyd: That is right.

Mr. Ward: And if your 60 agents are let alone for a short time, you will probably sell everybody in that whole county, and neighboring counties if possible?

Mr. Floyd: I hope so.

Mr. Ward: And every policy that has been sold had "Floyd's Undertaking Company" stamped on it, or the undertaking company down in Union?

Mr. Floyd: No sir, we don't stamp our name on any policy.

Mr. Ward: Well, you permit the undertaker to stick a [fol. 161] tag on there?

Mr. Floyd: How do you know what we do.

Mr. Ward: I am asking you.

Mr. Floyd: We don't.

Mr. Ward: Do you mean that none of the policies that you have issued has your name on it?

Mr. Floyd: Yes sir, that is correct. None of them have the undertaker's name on it.

Mr. Ward: And you have 60 agents.

Mr. Floyd: That is right.

Mr. Ward: How long have those agents been selling insurance?

Mr. Floyd: The time will vary. Some we had who came with us the day before yesterday, and some from the beginning.

Mr. Ward: Since this matter was brought up actively, you have tried to spread out as fast as you can in order to try to say to the legislature that you are an established company, haven't you?

Mr. Floyd: We have been an established company.

Mr. Ward: But you haven't been doing an established business?

Mr. Floyd: Yes sir, we have been.

Mr. Ward: Since the first of the year?

Mr. Floyd: Yes sir.

Mr. Ward: And the undertakers have been begging and pleading with you for months before that not to start this thing in South Carolina?

Mr. Floyd: No sir, I don't agree with that at all. There are a lot of them who want it in South Carolina. If they didn't they didn't have to take stock in it. Nothing has been forced on them at all.

Mr. Ward: You speak of extended coverage, and if the undertaker sells the insurance and handles the whole thing, he would know whether or not they have extended coverage. Isn't it true that the undertaker can call the local agent of the insurance company who sold the policy and in a very [fol. 162] few minutes get full information as to what is due?

Mr. Floyd: That is possibly true, of some companies, yes sir.

Mr. Ward: Isn't it true with the majority of the policies? Practically all of them?

Mr. Floyd: No, I wouldn't say that because half the time when they take a policy, they think it is lapsed, and they throw it away. There are a lot of people who come in there who have had insurance, and they can't even tell you what company it was with. They know it was collected by a Mr. Jones or a Mr. Smith, but they don't know what company it was with in a lot of cases.

Mr. Ward: And under your plan, the only way that could

be overcome would be for them to feel that they had to come to the particular undertaker to get a funeral?

Mr. Floyd: No sir, they don't have to come to any particular undertaker. Now, let's go into this thing a little bit more. You say that this thing is monopolizing. It is not.

Mr. Ward: I understood you to say so in that more than 50 percent of the undertakers in Alabama are now owned by the insurance companies who are selling this insurance?

Mr. Floyd: You are confused. There is a big difference between the operation in Alabama, and what we propose here. We have laws now that prohibit this thing from being a racket, and there is no way for it to be a racket. We are legal reserve life insurance company, and operate like any other insurance company, and I will show you something else you don't realize: My competitor sold for Woodmen of the World. Mr. Bobo is here, and he could tell you. He represented the Woodmen of the World for a number of years, and that didn't put me out of business.

Mr. Ward: He didn't have 60 agents out trying to sell against you?

Mr. Floyd: He may have had 100 of them out. He was an organizer.

[fol. 163] Mr. Ward: You never come in contact with any of them, did you?

Mr. Floyd: Oh yes.

Mr. Ward: Give us the names of any one of them?

Mr. Floyd: Well, I know there was a Mr. Powell, and a Mr. Cox. I have seen a lot of them.

Mr. Ward: All right, you say that this plan will discourage over-spending on funeral bills?

Mr. Floyd: That is right.

Mr. Ward: I want to ask you if it isn't true that it lays down the bars for the unscrupulous undertaker knowing the amount of the insurance to get every dollar of it, and leave not a cent for the widow and the children?

Mr. Floyd: No sir.

Mr. Ward: How would it avoid it. He knows the amount of the insurance?

Mr. Floyd: That is no problem now. When a person comes in to buy a funeral you can certainly ask them how much funds they got and it doesn't make any difference. That is no point as far as I am concerned. You can ask them whether they have insurance.

Mr. Ward: If the undertaker does not know so much about

the insurance, isn't it probable that he will discourage over-expenditures for a funeral?

Mr. Floyd: If he stays in business long, he will discourage it anyhow whether he knows about the insurance or not.

Mr. Ward: If he doesn't have to handle the policy and doesn't know all about it, he will be inclined to discourage overspending instead of encouraging it. Is that not true?

Mr. Floyd: No sir.

Mr. Ward: You say you are an old reserve company. Why do you not propose to sell your insurance like the old reserve line companies sell theirs?

Mr. Floyd: We do sell ours like they sell theirs.

Mr. Ward: You propose to sell it through undertakers to force the undertakers to be your agents?

[fol. 164] Mr. Floyd: We don't force them to do anything.

Mr. Ward: The competition will force them, won't it?

Mr. Floyd: No sir.

Mr. Ward: How come?

Mr. Floyd: Bobo was selling life insurance for the Woodmen of the World. Why didn't they force me out?

Mr. Ward: Isn't there a lot of difference between the organization of the Woodmen of the World and the organization that you put out there with 60 agents representing you?

Mr. Floyd: Those 60 agents are not in Spartanburg County. That is over the state, and even though if I did have them in Spartanburg County, it wouldn't make any difference.

Mr. Ward: That is all.

Chairman Mars: Are there any other questions you gentlemen want to ask Mr. Floyd?

Mr. Ward: I want to ask one more question: Did you write any of the undertakers of Alabama, Georgia, and Texas and get their opinion about this kind of insurance?

Mr. Floyd: I didn't have to. I have talked to them and they are all for it except those in Alabama that are owned by the insurance companies.

Mr. Ward: And in Alabama more than 50 percent are owned by the insurance companies?

Mr. Floyd: That is right.

Mr. Tyson: Explain the difference in Alabama?

Mr. Floyd: Alabama pays off in merchandise, gentlemen. Here is the thing about it: So far as Alabama, the people of

Alabama buy cheaper funerals in Alabama than you buy here today, and they pay off in merchandise. The only thing that the funeral directors don't like there is that the funeral has been sold at a cheaper price at his expense, and if you would realize that you would see that what we are proposing to do will eliminate that. They pay off in merchandise and service, and you have to patronize the mortuary named in the policy before you collect the benefits, [fol. 165] but we don't want that.

Sen. Wallace: That is in Alabama?

Mr. Floyd: Yes sir.

Mr. Tyson: What was your rank when you got out of the Army?

Mr. Floyd: Captain.

Sen. Mozingo: What were you when you went in?

Mr. Floyd: A buck private.

Mr. Tyson: And was Mr. Hoenig in the Army also?

Mr. Floyd: Yes sir.

Mr. Tyson: And you met him after he had gotten out of the Army?

Mr. Floyd: I met him while we were in the Service together.

Mr. Tyson: Is your company the only company in South Carolina that at this time is going forward on the plan that you have explained to the Committee?

Mr. Floyd: Well, I don't know so for certain, but as far as I know, it is. However, I do know that the other companies have solicited funeral directors and endeavored to sign contracts with them. I understood that one company——

Mr. Tyson: No use to go into that detail. I have another witness to put up, Mr. Chairman.

[fol. 166] (Charles Hoenig called.)

Mr. Tyson: State your name and where you live?

Mr. Hoenig: I am Charles Hoenig, and I live in Spartanburg, South Carolina. As Mr. Floyd told you, he——

Mr. Tyson: I want the committee to know your background—where you are from, what training you have had, and your education?

Mr. Hoenig: I think Mr. Floyd has given most of that originally.

Mr. Tyson: Where are you from?

Mr. Hoenig: Originally Dallas, Texas, and the majority

of my time I have spent as a management consultant for an industrial engineer.

Mr. Tyson: Go ahead.

Mr. Hoenig: Well, I would like to—I don't want to make a speech, but I would like to clear up in a short time some of the misunderstandings that I know are in your mind from what has been said by both sides today. I was sitting there thinking that if I were a member of the Committee, I would be very puzzled by this time from what has been said today. The reason is that Doug MacDougald and others are not interested in it, and on the other hand I know that 30 funeral directors are very much interested in it. I spent six months studying the plan in states as far West as California, and I have studied the plan in Kentucky, Georgia and Alabama because we wanted to find out what was good about these various plans, why they needed it, and how it was helping them or hurting them. Now, it was stated a while ago that in Alabama an insurance company owns 50 percent of the funeral homes. Fifty percent of the Brown Funeral Service was bought by Liberty Life Insurance Company in 1944, and they own 10 funeral homes now. I think there are probably 200 funeral directors in Alabama. There are all kinds of burial companies there that pay off in merchandise and service. The reason people like it over there is because they can buy a policy at one half the life insurance rate. They can buy a policy at less cost. The reason they got started is because people thought funerals were too highpriced in Alabama. So everybody there got a policy because it gives them a policy at one half price. The only ones who survive are those who started their own [fol. 167] insurance companies. That is one reason why 30 funeral directors in this state want to start it. The other reason is because of public demand for it. The funeral directors along the North Carolina line realize this. One of our agents formerly with another life insurance company worked all last week and all during week he only found four people up along there who didn't have a North Carolina burial plan which is illegal in this state. He talked to the man who solicits and sells this plan, and nobody stops him. George Benjamin can't stop him, and he will tell you he can't.

Sen. Wallace: Did your investigation show during the past several months how many would be buried by North Carolina?

Mr. Hoenig: We asked funeral directors who operated along that line and it ranges I think from one who lost 35 funerals because of the fact that these people have to patronize the firm from whence they bought the policy, on down to one. It depends on where they are located, and how well established their particular funeral home is, but the point is that the demand is there and this is a protective measure. Now, there have been a lot of things thrown out today which are inconsistent. Doug MacDougald said the motive of our company was profit, and he later beefed about five percent to the funeral director. They are incongruous. In the second place, it is not 5 percent, it is 15 percent. We have to pay whatever we have to pay to get good men. I will say their average earnings are $18 a day. We are not hiring collectors. Now, what difference does it make whether the funeral directors who own this company and who, incidentally, have been offered as little or as much stock as they want to buy—if MacDougald wants to control it he can. What difference does it make whether he gets it. It comes out in the form of commission or stock. Both are small. Our objectives are not profit. Our rates are lower, we have an incontestable policy, and we are not going to make much money. That is one reason they want to operate—exclusively—the insurance companies—because their one objective is profit. Now, any analogy to Brown's service or any other Alabama company—I am not going into details, but that is absolutely without foundation.

[fol. 168] Mr. Tyson: I wish you would explain and show by different companies, the insurance they wrote for the last year, the amount lapsed, and what effect in your opinion your plan would help these poor people in preventing lapses?

Mr. Hoenig: May I get to that in just a second. I would like to say this: Doug mentioned that the preponderance of votes in the House reflected the feeling of the funeral directors on this thing. I think the major credit will have to go not to the funeral directors who are not stockholders, but to the insurance companies for stirring up the insurance agents. They told them at a meeting in Union that we would put 4200 life insurance agents out of business in South Carolina. They told them in Union that we were a racket—that you got a $100 funeral for $500—that we didn't use normal agencies. And they prohibited any of our agents from attending. The men only heard one side. If I had

been there I would have signed any petition, too, having been told one side, and told what they were told. They also said in that meeting that the life insurance companies today are giving adequate service and adequate protection to the people. All we want to do is let the people decide that. If they are giving adequate protection in the people's mind, we wouldn't write any policies. Mr. Nat Turner said approximately 50 percent of their new business lapsed. I want to read from the South Carolina Representative.

Mr. Tyson: What page?

Mr. Hoenig: 20.

Mr. Tyson: What year?

Mr. Hoenig: 1947. I want to show you how much they wrote and how much lapsed, and you see what kind of service it is. One company wrote 9 million and lapsed 8 million. Another company wrote 20 million and lapsed 13 million.

Sen. Sawyer: What happens to those premiums paid in?

Mr. Hoenig: It depends on how long it has been paid. Some give a cash surrender. There is no reserve in industrial business, no reserve put up the first whole year.

[fol. 169] Mr. Tyson: Can you give us a reason why you think these companies lapse that way?

Mr. Hoenig: You will have to ask the people why. I don't know.

Mr. Tyson: Now, Mr. Turner said their agents had an incentive not to let insurance lapse. Apparently they are not giving some kind of service, is that right?

Mr. Hoenig: Under our set-up there is a demand to carry a small policy through the funeral home to put your loved ones away, and it is in all states. And it is in this state. It is going to be supplied one way or the other, law or no law, racket or no racket. All these funeral directors want to do is provide a legitimate service. I don't know all the reasons. I know some of them. In the first place, it is permanent. It will be there for years and years. They know if Doug MacDougall or Tom MacAfee handles it, or anyone else, it is going to be good because he is a funeral director, and he is in the funeral business. Our policy is no better than any other, but the reason the higher income groups want it is to prevent overspending which is, incidentally, why if a man held a $150 policy maybe that is all he wants to spend on his funeral. Maybe it will cut down my average sale. Maybe if something doesn't cut it down, the people will.

They are going to get what they want. If you want to be short-sighted about it, don't give them *way* they want. Now, on this channelling of proceeds, I think it has been refuted already well enough, but I want to reemphasize that our policy is like anybody else's policy. There are no names of funeral directors on the face of the policy. Let me tell you this before I give this policy to you: So far as I know with some insurance companies a policy holder can name anyone as beneficiary. A lot of them can name as beneficiary a funeral home. We don't permit it in our company. We want to stay just as far away from any semblance of a racket as possible. All we are trying to do is give the policy holder a good policy for his money and help the funeral director collect his receivable just like any other insurance, but we think we will have a much, much lower [fol. 170] lapse rate. So far it has been much lower. Further we write to age 75. Why do we write age 75? Well the actuary stops at 65 because the business over that is not as profitable as the younger years. We don't care about that. People 71 years old have to be buried, too, and we would like to write it to 90 and will if the Insurance Commissioner will let us.

Sen. Mozingo: Do you actually write policies up to 75?

Mr. Hoenig: Yes sir. The rates are figured by the Insurance Commission. You take it out when you are age 1 or age 69, and we have a 20 pay policy. It is good forever at the same rate. Now, I would like to read to you something that is very apropos from a funeral director's trade journal.

Mr. Tyson: What issue and what page?

Mr. Hoenig: Page 16, December 47. Now this is by a funeral director, and writer, and publisher, and I think you can get a pretty good idea that he is in a better position to say, generally, the issue involved. "Let's ask a very frank and fair question. When the subject of funeral insurance is mention, when we say funeral insurance, it is really life insurance. When the subject of funeral insurance is mentioned why is it so many wince. Do they shrink away from receiving such fender in payment of a funeral? No. Do they shrink away from the thought in abhorrence of having truck with a scheme that will enable them to collect a profit for the funeral? Is it fear based on the fact that it can become potent as a factor. Certainly insurance is here to stay just as the new hearse, the new chapel, or the new mortuary. Any improvement in service just as any im-

provement in service. Any time a funeral director adds one of these, he is merely endeavoring to attract business. There is as much reason to say the public benefits from funeral insurance as there is to so regard any life insurance policy. Funeral insurance and life insurance are identical except that the funeral policy is earmarked in the mind of the policy holder.", Another trade journal says that "Insur- [fol. 171] ance to cover burial is just as respectable as any other insurance provided it pays in cash, has a legal beneficiary, and pays to a named beneficiary," all three of which we have in our company. Now, Mr. MacDougald said if he didn't line up with this he would be put out of business. I can't see that that is any different from a department store saying that if they don't put in a soda fountain like the one next door they will go out of business, or a real estate man saying that if he doesn't handle fire insurance it would hurt his business. I think it would, and I think if MacDougald, or Bleckley and MacDougald don't go into it, it might hurt them. We have people in Greer saying "does Dick Wood offer it? If he doesn't I want to take it out with Woodruff in Landrum. They are not restricted there. It would hurt him just as much as if one outfit has a hearse and the other doesn't, but I have always been under the impression that free competition was the backbone of our economy.

Mr. Tyson: It will put more work on the funeral director, won't it?

Mr. Hoenig: Yes sir. Here are the reasons funeral directors are against it—the biggest bug being they don't want to bother with it. No funeral director wants to if he doesn't have to.

Mr. Tyson: But most of them know they have got to supply that public demand or someone else is going to?

Mr. Hoenig: Yes sir. A lot of them have been told they are not going to make a lot of money so they will not bother with it. A lot of them are afraid of the competition. The big funeral director says, "If I am selling these plans, that will enable my little competitor to increase his volume." The little fellow says, "If my big competitor is selling, he will gobble me up." One of the biggest reasons they are not in accord is because they are scared to death of the Alabama situation which definitely, I think, is good for the public, but it hurts the funeral director. And they are afraid of Tennessee where they pay off in merchandise

and North Carolina, and they are not familiar with the insurance so because they are afraid they think they will hide behind the laws because they don't want to and they will grasp at that straw, and that is what they are interested [fol. 172] in today. I think that I mentioned stock in the company has been made available in any amount, and if he wants to buy, he can.

Senator Wallace: What is the stock selling at?

Mr. Hoenig: $5 a share. He doesn't have to hire agents, he doesn't have to go and collect, and he doesn't have to go out and talk to people about it if he doesn't want to. Or he can have as many agents as he wants because they are paid on a commission basis.

Sen. Sawyer: What is your plan about a lapse?

Mr. Hoenig: You mean why do we?

Sen. Sawyer: No, what do you do in all instances where there is a lapse of payment?

Mr. Hoenig: One feature of our policy is that we have put in the highest extended insurance values permitted under actuarial insurance. If a man, let's say he is 21 when he takes it out and drops it and doesn't pay on it. I can check it exactly, if he is 21 and carries it ten years and stops paying, it will carry itself 274 months or 23 years.

Sen. Wallace. Have you a plan to call on anybody?

Mr. Hoenig: No, sir; we are not employing collectors. We haven't got a debit in our company. We sell like an ordinary life insurance company.

Sen. Wallace: Is it a mutual company?

Mr. Hoenig: No sir, it is not.

Sen. Wallace. Is it participating?

Mr. Hoenig: No sir, it just gets too involved. People don't understand what participating means—what they get back ten cents for. We don't employ collectors. Everything is set up like an ordinary life insurance company. If the person doesn't want to bring their premiums in, or if they stop paying and don't want the plan that is all right. [fol. 173] Chairman Mars: You send them a notice, don't you?

Mr. Hoenig: We send them a reminder when it is due. Yes sir.

Sen. Sawyer: What is the highest amount you write?

Mr. Hoenig: We write up to $750.

Sen. Jefferies: Are your policies cheaper?

Mr. Hoenig: I have rate comparisons here. We are not

selling it on cheaper rates—you get what you pay for, but we have got it from five to fifteen percent less than other industiral companies selling the same amount.

Sen. Wallace: What would be the premium at age 35.

Mr. Hoenig: That is $2.12 a month.

Sen. Wallace: And at 35 paid for ten years, what would be the extended term?

Mr. Hoenig: 35 when you took the policy out—that would be 164 months—about 14 years.

Sen. Wallace: If you carried it from 35 to 45 you would be a year beyond the average death?

Mr. Hoenig: Yes sir, we are not interested in making profit except as needed for expanding the company.

Sen. Wallace: Did you ever put up legal reserve?

Mr. Hoenig: Yes sir.

Sen. Wallace: You are subject to all the rules and regulations?

Mr. Hoenig: Yes, and a little more. George Benjamin will watch us more to be sure no racket is operated.

Mr. Tyson: Have you had any complaints from any of the Insurance Commissioners?

Mr. Hoenig: No sir. Let me tell you this: We opened one agency and in the first week we had 120 inquiries by mail, we had 37 by telephone, and we had 24 people come in and find out about it, and you show me where they come after other insurance like that. The letters say "We are very enthused about your plan. We wish South Carolina had had something like this before."

Sen. Wallace: What about the tax feature of the plan for the State?

[fol. 174] Mr. Hoenig: It is the same as any life insurance company. We are a life insurance company. No fraternal benefits or anything like that.

Mr. Ward: Mr. Hoenig, I want to ask one question: In that trade journal you were reading from, you read a portion of it. Isn't it true that following that there is a rebuttal of that argument?

Mr. Hoenig: No sir, would you like to see it. The title of this article is "Funeral Insurance, Like the Automobile, is Here to Stay."

Mr. Ward: Isn't it true that the undertakers are the collecting agencies for the premiums on your policies?

Mr. Hoenig: The people make their payments to the funeral home?

Mr. Ward: They have got to?

Mr. Hoenig: We are trying to get a feeling of permanence there.

Mr. Mozingo: You mean you can't mail them in?

Mr. Hoenig: Now, some of the funeral directors say they want separate offices for this. If they do, fine.

Chairman Mars: Are there any other questions? Your time is up.

Mr. Tyson: We have a number of other witnesses.

Sen. Jefferies: Mr. Hoenig, you say there are 30 other undertakers who want to get in this?

Mr. Hoenig: No sir, there are 30 who own stock in it, are licensed, and are already selling it.

Sen. Mozingo: Could anybody tell me the number of undertakers in the Association?

Mr. Hoenig: About 120.

(J. A. Bass called.)

Mr. Bass: I am a funeral director from Rock Hill, South Carolina. I have been in business there for a good many years, and followed my father. From time to time we have had inquiries from different people of our community as to why we do not and have not had some form of burial plan or pre-arranged funeral as they have done in contact [fol. 175] with in other states. We have told them and answered them as best we could to the effect that it was not in South Carolina. There was a law which prohibited burial insurance. Sometime ago there came to my attention the fact that there were a number of funeral directors interested in organizing an insurance company which would sell pre-arranged funerals and not burial insurance. Immediately upon learning this due to the situation that we had locally, I took stock in the company and have stock in the company, and have been operating for about 3 weeks and selling policies on prearranged funerals in my locality. This is a policy that you have already seen that is recognized and controlled by the Insurance Commission of South Carolina.

Sen. Wallace: Is it limited?

[fol. 176] Mr. Bass: It is the same thing—up to $750. It is the same policy that you have seen.

Sen. Wallace: It is strictly a funeral and not an investment type policy?

Mr. Bass: Yes sir, but it is paid off in cash.

Sen. Wallace: It wouldn't compete with ordinary? You couldn't invest as much as you wanted to?

Mr. Bass: $750. is all a man can get. The reception upon the sending out of information of this plan that we have has been exceedingly good. We had a service out in the country, a funeral service, the other day, and at this service one of the very strong merchants out in that neighboring community came to me and said that this information had been brought to his attention, and he thought it was one of the finest services that the funeral directors of South Carolina could give, and he immediately asked that an agent come to see him. The agent went to see him two days later, and he showed his faith in it by the fact that—took the policy on himself and one on his wife. He, himself, is above 60 years. He is getting close to 70, and she is about 63 as I remember.

Sen. Sawyer: Tell me this. This bill says that you morticians shall not engage in this business?

Mr. Bass: That is right.

Sen. Sawyer: And these other gentlemen want to do it?

Mr. Bass: Yes sir.

Sen. Sawyer: Tell me why you should want this. Your statement about the merchant is like an Evangelist with miraculous stories of being saved. I want you to tell me why this should be written and then find out from these other gentlemen why it should not be written. Is it because that gentleman who came to you for a policy for he and his wife were over 70? Now I have a mutual policy—Now, is this insurance to cover the expense of flowers and hearse and paid mourners and all that kind of stuff?

Mr. Bass: They can spend part of it or all.

[fol. 177] Sen. Sawyer: And it is really a funeral insurance, this family security life insurance company, it is really a company where a person takes out a policy to pay to his wife or whoever survives him, but it is a funeral insurance?

Mr. Bass: Yes sir.

Mr. Tyson: Tell the Committee, briefly, now, why it fills the need?

Mr. Bass: Well, I am only about 12 miles from the North Carolina border, and I have had and have seen funerals that have been handled in my section by funeral directors from North Carolina. The other day to prove to myself that the North Carolina Funeral Directors were soliciting, I don't know whether they were soliciting or not—I can't prove that,

but certainly I know that policies of North Carolina Funeral Directors are being sold across the line. The Catawba River is only 4 or 5 miles from Rock Hill. There were two men sent by this insurance company up on the North Carolina border to find out what the situation was in that locality. They went through there, and they came back that night with the information that four out of five homes that they had called on held policies that were from North Carolina. Now, I have got sense enough to know that a little river like the Catawba River 100 yards wide that this burial insurance from North Carolina is certainly going to jump over into my town which it has already done. Gentlemen, I can't sit down and go to sleep. I am like some of the other funeral directors here. In fact, back during the war I worked until I broke my health and had to stay out of my business for a year, and when I have stood up and fought night and day trying to build up a business and then see an out-of-state insurance company take my business away, gentlemen, I am opposed to it, and I am opposed to this bill.

Sen. Pruitt: Does North Carolina have the same thing as this proposed plan?

Mr. Bass: No sir, one is a burial insurance and the other is a pre-arranged plan. They have to go back to that [fol. 178] funeral director in order to collect.

Sen Pruitt: If you had an agent, wouldn't he tell them when they had a need for it to come to you?

Mr. Bass: I am glad you asked that question. The other day we had a man that I know for a definite fact that the other funeral homes in Rock Hill has handled two funerals in that home in the last seven or eight years. He asked the question as to whether or not he would have to patronize us in order to use that policy, and we immediately answered no, and he took the policy and made the statement that he absolutely felt like that he needed, but at the same time he definitely would not call us, but would call another funeral home. That happened the other day.

Mr. Tyson: How many have you sold?

Mr. Bass: We have sold better than 200 policies.

Mr. Tyson: Will this plan that you are now talking about increase insurance in this state in your opinion?

Mr. Bass: I can answer yes for this reason: People who would drop other types of insurance will be more apt to keep this type up.

Sen. Pruitt: Mr. Chairman, they tell me a representative

of the insurance companies has got up from the sick bed to appear before the committee now.

(ALBERT ORGY called:)

Mr. Orgy: Mr. Chairman, this is Albert Orgy, president of the South Carolina Life Underwriters Association. Gentlemen, I am glad that I got up from the sick bed, and I have been in it for three days, to come down if for no other reason to answer one accusation that has been cast my way this evening. It has been said to you gentlemen here that I, and I am the man, that a man made a speech in Union, and that he said that 4200 life insurance agents in the State of South Carolina would be put out of business if this kind of thing was allowed to operate. Gentlemen, I did not say that. I said this: That this would affect approximately 4200 life insurance men in the State of South Carolina, and [fol. 179] let me tell you again as I told that group, and as I told a committee before the legislature on banking and insurance, and I have made in some 12 or 14 addresses over this state in the last three or four weeks. The life insurance men of the United States and South Carolina, and every community in South Carolina that has a local association organized themselves together in a professional organization many years ago, gentlemen, as closely allied, as closely akin to the American Medical Association or the American Bar Association as we can possibly get. We organized ourselves first and foremost for the protection of the many people that we serve over the United States and *I*n South Carolina and in the communities. We organized ourselves secondarily to protect the American agencies system of dispensing insurance which has been for this country's good. I am told that more people in the United States own life insurance policies than in all the other countries put together. Gentlemen, who made those people see the advantages of life insurance? Your American agencies system of dispensing business made them see it. Gentlemen, I would like to make one brief, clear, and concise statement, and I will sit down because I have a fever of 102; and there are too many undertakers around here. Gentlemen, the life insurance company men of South Carolina are 100 percent against the manner in which this company proposes to write and service life insurance. I will tell you again as I have told them over there and as I have admitted before every group that I have spoken to that they have a life insur-

ance company that is organized under the state law, and has met every law that is on the books, and they are running on the Commissioner's standard of arriving at rates, and we are not in any way, shape, form, or fashion attacking the life insurance company's proposal to do this. We are attacking, again I repair, the method of distribution. You have heard two gentlemen here today. One said virtually this: He said the same thing before the Legislature: That the main purpose of this was to pre-finance funerals. Pre-finance funerals. You heard another gentlemen say that they were not going to make the margin of profit that other [fol. 180] life insurance companies made. Gentlemen, it seems to me that that is rather pointed. I would like to bring your attention to if I may to two states I have served my company in. I have served in the State of Alabama, and I have served in the State of Louisiana. These gentlemen are not proposing to do business as has been done in those two states because they have put a clause in there policy which says "We will pay in cash." There is a law on the books of South Carolina, gentlemen, which was put on there by a certain group who wanted to keep certain types of funeral insurance out of this state, and they put this law on the books that you cannot pay off in services. Now, gentlemen, it comes back differently. It comes back to you as a legal reserve life insurance company meeting all of the laws, but saying that we will tie this with funeral homes throughout South Carolina. Gentlemen, I ask your indulgence—I ask your indulgence in this thought without any ac*quisi*tions, whatsoever, that if you were in the insurance business servicing and handling and knowing the affairs of people who trusted their money with you to pay their bills at the end of this life, would you be in a position to bring to your place of business policy holders every month and you heard them say that they were interested in pre-financed funerals without any coertion, without anything being done out of the ordinary. Isn't it more normal not to believe that this thing could be something like this, and mind you, I am saying it could be without any accusations that when a man has sold a policy that way back in the mind of the man selling that is the thought that I have sold a funeral while a man lives. I have sold a funeral while a man lives. It is true that he can to to any funeral home, but those policy holders are being channeled back

to that funeral director for service and to collect premiums. Gentlemen, I would like to tell you that we have 18 local associations in South Carolina. I have talked with all 18 of those associations since this thing came up. I have heard one man in the insurance business say that he thought that it would be perfectly all right for a [fol. 181] company to operate this way. That man later changed his mind and came down here on the day that the legislature passed this bill No. 1141. For your information, gentlemen, the life Underwriters Association has spent thousands of dollars educating its representatives, and educating its membership to be able to better serve the people. For your information in Columbia right now the Columbia Association is sponsoring a training course that meets 9 o'clock in the morning on Friday and closes at 12 o'clock. We have the very best brains in the insurance business to teach this course. The national association is sponsoring a course that will be inaugerated as advance training to take up where the local association training course leaves off. General agent qualification laws. Laws that pertain to the acquisition of business in other states, and some of them in this state have been directed in the past ten years to improving the type of agents, and thereby developing more public confidence. Gentlemen, the life insurance companies nor their agents are afraid of this competition. Nor do we envy any dollar premium that this company will get. I tell you again that we are against this manner of distribution of tying it to a funeral home—a business which is indirectly the recipient of the life insurance company, and gentlemen, we stand behind that one hundred percent.

Mr. Johnson: Let me ask you a question: You say that when a policy is taken out by a man the benefits will be channeled to a certain mortuary?

Mr. Orgy: I didn't say to a certain mortuary.

Mr. Johnson: Did it ever occur to you that maybe that individual in the freedom of his choice might want that mortuary to handle his remains?

Mr. Orgy: I believe this, sir. I believe that the life insurance companies of America which are at the present time writing policies starting at $50.00 to $100.00 have that service already that they are looking for.

Mr. Johnson: Is there any reason if that man did want that mortuary to bury him, is there any reason to deprive him who is paying the premium of that freedom of choice?

[fol. 182] Mr. Orgy: I will answer you by saying this: That I believe that in the two states that I have mentioned to you that if it is allowed to operate in this state that unscrupulous undertakers could take advantage of the situation.

Mr. Johnson: Well, I thought according to Mr. Ward that honesty and integrity were the badges of the undertaking profession. I want to ask you that same question then. Is there any reason why the insured should be deprived of the freedom of choosing a mortuary to handle his remains if he so chooses?

Mr. Orgy: Mr. Johnson, I am told that one of the duties of the legislature is to legislate in the best interests of the public. If they feel it is all right, then it is. However, the Underwriters Association trys to keep insurance on a high plane and we resent certain influences or influences that tend to come into it.

Mr. Johnson: What you mean is it would lower the standard?

Mr. Orgy: That is what I mean—that it would have a tendency.

Mr. Johnson: But you are not worried about competition? It would just lower the standard of your business?

Mr. Orgy: To show you how matters get out of hand, take in Louisiana——

Sen. Mozingo: Everybody keeps talking about what Louisiana, Alabama, or Charleston does. Do you have any single illustration of any policy holder under the operation of this plan who has been abused, cheated, defrauded, or anything else, or any complaint of any policy holder?

Mr. Orgy: No sir.

Sen. Mozingo: I am not representing the funeral interest, but I have had complaints in my office about insurance companies. I just wondered if you had any specific illustration in South Carolina against the mortuary insurance business?

Mr. Orgy: No sir.

Mr. Hoenig: Do you know that we have on our agency force 3 men who are members of the Underwriters Association?

Mr. Orgy: I didn't know that.

Mr. Hoenig: Do you know that we have had career men [fol. 183] who have 18, 19, and 21 years in South Carolina in the insurance business?

Mr. Orgy: No sir.

Mr. Hoenig: How does our agency system differ? You told them it was different. How do we dispense? What do you know about our agency system?

Mr. Orgy: I heard you state that you propose to have no collectors and that your premiums would be 15 percent cheaper.

Mr. Hoenig: We have seven districts in the state. Does your company have men who are in charge of each district?

Mr. Orgy: Yes sir.

Mr. Hoenig: We do, too. Do your men have branch managers?

Mr. Orgy: Yes sir.

Mr. Hoenig: We do, too. Does your company provide full time men to tell them about your policy?

Mr. Orgy: We do.

Mr. Hoenig: We do, too.

Sen. Sawyer: Mr. Chairman, I think this is just argument, and I think we ought to stop here.

Sen. Jefferies: Mr. Orgy, you don't mean to say that you think funeral directors of South Carolina are not qualified to act as insurance agents, do you?

Mr. Orgy: Mr. Jefferies, I was asked that same question and I will say this: What South Carolina does with this remains to be seen, but I will tell you that in New Orleans, Louisiana where I lived and worked, the radio blasted every 15 minutes with some certain type of funeral, and placards were posted and leaflets were sprayed about, and funerals were solicited as you would solicit magazines, and I can't make myself believe even though this policy pays off in cash that if this thing is allowed to spread that we can boarder on the same situation that I saw in Louisiana.

Sen. Jefferies: You didn't answer my question.

Mr. Orgy: I don't know the answer.

Sen. Jefferies: Do you mean to say that funeral directors are not men of sufficient intelligence and honesty?

Mr. Orgy: I didn't say that.

Sen. Jefferies: You said it would lower the standards of [fol. 184] the underwriters association.

Mr. Orgy: I think I made myself clear, but I will answer you again. To have a business as a recipient of another business, to be closely allied as these two are, unless very carefully handled, will lead to an unhealthy condition.

Sen. Jefferies: To you probably it is, but I have a higher regard for the funeral directors.

Mr. Orgay: I have a high regard. I don't think anybody has been closer to them than I have lately.

Sen. Jefferies: I think you are hurting your case when you attack the funeral directors.

Mr. Orgy: I have not attacked them. I made a statement which I stick to and I have made no accusations.

Mr. Sawyer: Mr. Chairman, it is getting close to 7 o'clock.

Chairman Mars: Gentlemen, I think we have heard about all we have time for, and this closes the hearing.

(Whereupon the session was ended.)

Reported by: R. R. Johnson.

[fol. 185] [File endorsement omitted]

In the United States District Court for the Eastern District of South Carolina, Columbia Division

I Concur: George Bell Timmerman, U. S. D. J.

August 11th, 1948.

C. A. 1918

Family Security Life Insurance Company; J. Gordon Floyd, W. Russel Floyd and William E. (William P.) Lanford, Plaintiffs,

v.

Honorable John M. Daniel, as Attorney General of South Carolina, Honorable L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, Defendants.

Before Dobie, Circuit Judge; Wyche and Timmerman, District Judges.

Opinion Filed August 12, 1948

Wyche, District Judge:

This is a suit to enjoin the enforcement of a South Carolina statute (Appendix A) which, among other things,

declares it to be unlawful, punishable by fine and imprisonment in the discretion of the Court, (1) for any insurance company to own a mortuary or to permit its officers or employees to operate a mortuary, and (2) for any funeral director or employee of a mortuary to be licensed as an insurance agent, upon the ground that it is violative of the Federal Constitution.

With the filing of the action, plaintiffs applied for the convening of a statutory Court to hear and determine their application for an interlocutory injunction, and pending such hearing, for a temporary restraining order. Section 266 of the Judicial Code, 28 USCA 380. On April 17, 1948, [fol. 186] an order was entered, convening such statutory Court, and granting a ten day temporary restraining order, which has been continued by agreement of the parties.

The hearing before the statutory Court was based upon the pleadings, stipulations and various affidavits submitted by the parties. It was agreed by counsel for all the parties that, after ruling out all incompetent matter, the cause be submitted for a final decree upon the merits.

It is clear from the pleadings and the record that federal and equity jurisdiction exists, and that if the Act be unconstitutional, as claimed, plaintiffs are entitled to the relief prayed. *Dobie on Federal Procedure*, 166; *Leggett Co. v. Baldridge* (1928) 278 U. S. 105, 110; *Terrace v. Thompson* (1923) 263 U. S. 197, 215. The question in this case is whether the challenged act contravenes the due process and equal protection clauses of the Federal Constitution.

The facts giving rise to the controversy, briefly summarized, are as follows: For a number of years insurance companies, primarily those engaged in the issuance of what is commonly designated as "industrial insurance", have been selling in South Carolina a type of insurance policy which assures the payment of the assured's funeral upon his death. The record shows that in one instance at least (and the record does not indicate whether this case is instanced as an isolated example or as illustrative of a common practice) the agent of the insurance company selling this type of insurance, was an employee of a mortuary. So far as the record shows, no improper advantages of any kind were taken of the assured, either as a result of the issuance of this type of insurance, or of the fact that an agent selling it was connected with a mortuary.

In the early part of 1948, the plaintiff Family Security [fol. 187] Life Insurance Company, a legal-reserve life insurance corporation, organized under the laws of South Carolina, embarked aggressively upon the business of writing this "pre-paid funeral" type of insurance. The active promoters of the company were J. Gordon Floyd and A. G. Mackey, both funeral directors, one located in Spartanburg and the other in Greenville, South Carolina. One of the reasons for Floyd's and Mackey's interest was their natural desire to see that as many persons as possible had assured the payment of their funeral through insurance. One of the heavy expense items in a mortuary, especially in the South, is the large volume of "charity funerals". By energetically pushing this type of insurance, Floyd and Mackey, both for themselves and for other morticians, would be protecting themselves, to a degree, against the loss attaching to "charity funerals".

The officers and employees of other mortuaries in the State were actively solicited as stockholders and agents of this insurance company. A large number associated themselves with the company as stockholders and/or agents. The company made rapid strides immediately. To a degree this resulted from the more liberal provisions incorporated in this plaintiff company's policies.

All polices offered by the company are on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner; and claims paid on the company's policies of insurance are made in cash, and permits the beneficiary freedom of choice in selection of a funeral home and in selection of type and cost of merchandise and services. Its contracts are more favorable to the insured than those of other competing companies writing the same class of insurance because of higher policyholders' reserves, more favorable premium rates, more liberal extended insurance and cash sur- [fol. 188] render values, and the adoption of the 1941 Standard Industrial Mortality Table. And it, alone, of all South Carolina companies, writes insurance up to age 74, and is the only industrial insurance company in South Carolina that has adopted the recommended provisions of the Guertin Reports. (Appendix B).

The plaintiff insurance company has 34 stockholders, all of whom, except one, either own, manage, supervise, operate or are employed by a mortuary, or undertaking

establishment. It has 79 agents, all duly licensed by the Insurance Commissioner of South Carolina, 51 of whom are funeral directors, or owners, employees, or agents or officers of mortuaries, funeral directors, or undertaking establishments. No one funeral home may own more than forty-nine per cent of the company's outstanding stock. Its President and all but one of its five directors are either owners, managers, supervisors, or operators of mortuaries or undertaking establishments. It grants no exclusive agency in any community; anyone, including those in or entering into the undertaking business can become an agent and become a stockholder in the plaintiff company.

In 1947, before the plaintiff company became active, the insurance laws of South Carolina were drastically revised under an Act known as "The Insurance Law". 45 Stat. of S. C., pp. 322-473. These revisions were designed to, and did invest the Insurance Commissioner of South Carolina with the broadest and most extensive powers of supervision and control over insurance companies and insurance agents operating in South Carolina. Under "The Insurance Law", an insurance company can only be authorized to operate in South Carolina if the Insurance Commissioner approved its charter, and no agent can be licensed until the Commissioner has determined upon application and examination that the applicant is "a competent and trustworthy person" to act as such agent. This law clothes the [fol. 189] Commissioner with authority to correct any form of "unfair competition" found by him to be employed by any insurance company. It also makes it a criminal offense, punishable by fine and imprisonment in the discretion of the Court, "to make payment or settlement of death benefits * * * in merchandise or services rendered or agreed to be rendered". The Insurance Commissioner is empowered to revoke licenses of companies for proper cause or for violation of the laws of this State; to revoke the license of an agent when it appears that an agent has violated the law or *wilfully deceived or unjustly dealt with the citizens* of the State. In short, "The Insurance Law" gives the Commissioner plenary authority to deny or revoke licenses to any company or agent whose operations or activities might be deemed as a violation of law, unfair, unjust or deceptive.

Before the enactment of the challenged statute, and after an investigation of the proposed operations of the plain-

tiff company the Insurance Commissioner of the State, acting under "The Insurance Law" had duly authorized it to engage in the writing of its type of "burial insurance" through funeral directors and employees of mortuaries, generally, as agents. Prior to this approval being given, the South Carolina Insurance Commissioner, it appears from the undisputed record, carefully inquired into plaintiff company's proposed method of operating and especially its intention to use normally funeral directors and employees of mortuaries as its agents. Such administrative officer, charged with special knowledge and familiarity in the field of insurance and clothed with such extensive powers, was not required to approve the operations of an insurance company if those operations transgressed the insurance laws of South Carolina, were unfair as against policyholders or competing companies, or might be subject to deception or improper advantage. By approving the [fol. 190] plaintiff company's operations, the Insurance Commissioner had necessarily to conclude that those operations were proper. Similarly, the Insurance Commissioner duly licensed all the agents of plaintiff company, including the individual plaintiff Lanford, most of whom were employees of mortuaries. In so doing, the Commissioner found that such persons were both "competent" and "trustworthy" in every particular.

As the business of the plaintiff company increased rapidly its competitors became active. At meetings of agents of the competing insurance companies, pressure for legislation to destroy plaintiff company and to proscribe its agents was agreed upon. Division developed, too, among the morticians themselves and some of them joined with the competing insurance companies in promoting special legislation intended to destroy plaintiff company and its business. It seems obvious from the record that this legislation had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor. As a result of this pressure, the Legislature of South Carolina enacted, and the Governor approved on April 14, 1948, the challenged statute. (Appendix A)

Obviously, this statute foreclosed plaintiff Lanford from pursuing further his established insurance business, simply because he was also employed by a mortuary. It likewise made it impossible for plaintiff company to have funeral directors and employees of mortuaries licensed as its

agents, though this was its established method of operation, which had been approved by the Insurance Commissioner. Because the statute hit so patently at plaintiff company and its agents and limited their operations, the plaintiff company and the plaintiff Lanford, suing on behalf of himself and all others similarly situated, promptly filed in this [fol. 191] Court their action to enjoin the enforcement of the statute.

The applicable principles of constitutional law are well settled. While the legislative power to regulate insurance is undisputed and although every presumption in favor of the legality of the legislation may be indulged, neither of these principles will justify any arbitrary legislative interference with the right of an individual to follow a lawful vocation such as an insurance agent. Any legislative restriction upon such right of a citizen must have some rational basis and must be reasonably designed to protect against some recognizable evil. To be specific, when the legislation questioned in this proceeding would deny to any employee of a mortuary the right to follow the lawful vocation of an insurance agent for no reason other than his employment by the mortuary, it is essential, if such legislation is to withstand the attack upon its constitutionality, to show that there is some connection between the legislative prohibition and an evil arising out of the employment of such employee as an insurance agent.

In *Burns Baking Co.* v. *Bryan*, 264 US 504, at page 513, the Court said: "* * * a State may not, under the guise of protecting the public, *arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.*" (Emphasis added)

In discussing the Fourteenth Amendment and its guaranties, the Court in *Meyer* v. *Nebraska*, 262 US 390, at pages 399, 400, said: "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in [fol. 192] any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long

recognized at common law as essential to the orderly pursuit of happiness by free men. * * * The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. *Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts.*" (Emphasis added).

The statute in question would deny to any officer of an insurance company the right to own an interest in a mortuary and, more importantly, would make it a crime for an employee of a mortuary, whatever the character of his employment, whether part time or full time, whether as occasional driver or as general manager, to sell life insurance. This statute has no saving separability clause of constitutionality. In view of the modern form of legislative drafting, the omission of such a provision evidences clearly the legislative intent that this statute must stand or fall as a whole. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, at page 312. If either limitation imposed upon the right of freedom of contract is invalid, the entire statute must fall. Certainly, that portion which makes it illegal *per se* for an employee of a mortuary to write insurance too transgresses the constitutional restraint upon legislative action.

This legislation carries on its face no evidence of the evil sought thereby to be thwarted by the proscription of employees of undertakers as insurance agents. In their answer, their competent affidavits, or their arguments, the defendants have referred to no real facts justifying the pro- [fol. 193] scription. Their argument is silent of any reasonable basis for this limitation upon the right of employment by a citizen. There is nothing to show that the interest of the public generally, as distinguished from other industrial insurance companies, requires such interference.

How can this Court, however much it may indulge its fancy, find any reasonable basis for this restriction upon the right of an individual citizen? The undisputed record in this case shows that prior to the enactment of this legislation one of the individual plaintiffs, an employee of a mortuary, had been duly licensed as an insurance agent by the Insurance Commissioner of South Carolina to write insurance for two other life insurance companies. It mat-

ters not under the assailed statute whether he merely drives an ambulance part-time or acts as a part-time usher, this statute declares his employment as an insurance agent as criminal. Yet, under "The Insurance Law." of South Carolina no one can be licensed as an insurance agent until the Insurance Commissioner has examined him, made due investigation and inquiry, and has satisfied himself that the agent is of sufficient moral character and sufficiently qualified to be authorized to act as an agent. By this same law the Insurance Commissioner is empowered, if any agent licensed by him should conduct himself improperly, violate the law, wilfully deceive, or unjustly deal with citizens of the State, to revoke the license theretofore issued. The plaintiff agent was issued a license by the Insurance Commissioner after such investigation and examination. This license was renewed only a few weeks prior to the enactment of this legislation. The Insurance Commissioner of the State has taken no steps to revoke his license. Nonetheless, in the absence of any showing that such agent is incompetent to act as an insurance agent and in the face of the positive [fol. 194] finding by the Insurance Commissioner of the State that he is so qualified, the legislature has attempted by this challenged act to deprive him of the right to continue to act as an insurance agent in accordance with the authorization given to him by the Insurance Commissioner of South Carolina for the simple and only reason that he is employed also by a mortuary. Under such circumstances the conclusion, it appears to us, is inescapable that the legislative prohibition is an arbitrary exercise of the legislative power violative of the constitutional rights of the individual plaintiff.

Defendants' main contention in their arguments addresses itself to that portion of the assailed statute which denies to a mortuary and a funeral director the right to be licensed as an insurance agent, but it is equally clear to us that the reasoning employed to support this legislative prohibition is similarly untenable. In their arguments they attempted to give some coloring of reason to this arbitrary legislation. Thus they have suggested that if an undertaker or funeral director or mortuary is licensed as an agent for an insurance company and actively aids in the development of its business, there will be some temptation to charge for the funeral the full amount of the insurance, even where the insured is a person of very scant means. Such argument overlooks

the fact that this insurance is procured for the purpose of assuring an adequate funeral for the assured. The assured has himself fixed the amount of that insurance and has thereby determined the amount which he wishes invested in his funeral. Since the assured took out the insurance and paid the premiums, his wish that the full amount of insurance should be used for his funeral represents, it would seem, a trust which his family would conscientiously carry out.

[fol. 195] It is also asserted by the defendants that this portion of the challenged statute is intended to circumvent any subtle evasion of the existing statutory law prohibiting the payment of life insurance policies in merchandise or services. The policy and the by-laws of the plaintiff company provide that it shall be payable in cash. That is an enforceable right. The "Insurance Law" requires the amount of the policy to be paid in cash. We cannot assume that the plaintiff company and its agents will violate the criminal law. No one has suggested that there has been the slightest attempt at evasion of this provision of the contract. The theory upon which this argument is predicated is that the "facility of payment" clause would justify the insurer in paying the proceeds of the policy to the undertaker conducting the funeral. The language of the clause does not support this conclusion. But it is true that the proceeds of the insurance will likely be used to pay for a funeral. This is the purpose of the insurance. The assured was seeking thereby to guarantee the payment of his funeral. If the beneficiary of the policy does not provide a funeral for the assured with the proceeds of the insurance, he will, as we have already pointed out, be violating at least a moral duty to the deceased.

Furthermore, during the legislative hearings, preceding the enactment of the statute in question, it was freely conceded by the proponents of the legislation that they knew of no instance when any advantage of any kind had been taken of any assured, or of any complaint as a result of the operations of the plaintiff company, of the issuance of its type of insurance, or of the fact that morticians or their employees acted as agents for an insurance company.

Moreover, if the plaintiff company's method of operating [fol. 196] was of a character to facilitate the evasion of existing insurance laws, such as that prohibiting settlement of the policy in merchandise and services (a conclusion that has no

plausibility in the face of the admitted fact that the plaintiff Floyd was one of the active promoters of this provision, and was instrumental in obtaining its incorporation in the "Insurance Law"), the Insurance Commissioner was authorized under existing law to deny the plaintiff company the right to operate and to deny to its agents licenses. His failure so to do is cogent proof that this argument of the defendants is without any merit.

It is also stated that Mr. Floyd in his campaign to secure undertakers as agents for his company stated that this insurance would be a means of confining the undertaking business in South Carolina to the undertakers who are Floyd's agents and that it would be a means of discouraging new competitors, especially veterans, from embarking upon this business. The undisputed facts in this case refute this suggestion. The plaintiff insurance company grants no exclusive agency in any community. Anyone entering the undertaking business can become an agent and become a stockholder in the plaintiff company. This applies to veterans and everyone else alike. This insurance cannot, therefore, be used as a device for maintaining the business status quo or closing the door to any new competitor all of whom have equal rights with their older competitors to utilize this service. Further, it must be remembered that the plaintiff company has no copyright on this type of insurance. Already, many other insurance companies write it. For many years many of the smaller life insurance companies have been engaged in writing this type of insurance almost exclusively, and many of the larger companies have an "Industrial Department" for writing this type of insurance. If an undertaker does not wish to represent the plain- [fol. 197] tiff company, there are many competitors of the plaintiff company whom he can represent.

It is said that the undertaker insurance agent received a modest commission of only 15% and that this remuneration is so small that the agent will be tempted to secure his remuneration elsewhere. Why 15% is not adequate compensation the defendants do not show. Certainly if the agent secures a sufficient volume of business this rate of commission should provide an adequate return. In any event, it seems impossible to support a statute of such an arbitrary nature as the challenged act on this novel ground.

Actually, it seems obvious from the record that this legislation had its genesis in the desire of the existing insurance

companies to eliminate the plaintiff company as a competitor. This language of the Court in *People* v. *Gillson*, 109 N. Y. 389, 17 N. E. 343, at pages 435, 346, seems apt: "Liberty, in its broad sense, as understood in this country, means the right, not only of freedom of servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. These principles are contained and stated in the above language in various cases • • • (citing cases). It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. *It is evidently of that kind which has been so frequent of late,—a kind which is meant to protect some class in the community against the fair, free and full competition of some other class; the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably to them, or unfavorably to their competitors, in the commercial, agricultural, manufacturing, or producing fields.*" (Emphasis added)

[fol. 198] The reasoning of the Supreme Court in *Liggett Co.* v. *Baldridge, supra*, seems conclusive against the validity of the instant statute. In the cited case, a Pennsylvania Statute required every drug store to be owned by a licensed pharmacist, and forbade any corporation, association or partnership to own a drug store unless all the partners or members were licensed pharmacists. In striking down such legislation as unconstitutional the Court said: "A state undoubfedly may regulate the prescription, compounding of prescriptions, purchase and sale of medicines, by appropriate legislation to the extent reasonably necessary to protect the public health. And this the Pennsylvania legislature sought to do by various statutory provisions in force long before the enactment of the statute under review." After reciting the regulatory legislation of Pennsylvania protecting the public health in relation to the compounding and sale of prescriptions and medicines the Court concluded: "Thus, it would seem, every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding, or selling drugs and medicines is amply safeguarded." Likewise, it may be said with equal force, in applying the same reasoning

here that a state undoubtedly may regulate the insurance business and the licensing of insurance companies and insurance agents, and the revocation of such licenses, and this, South Carolina sought to do, by the enactment of "The Insurance Law", before the enactment of the statute under consideration. Thus, it would seem, every point at which defendants contend that the public health, safety, morals or general welfare is likely to be injuriously affected by the licensing of funeral directors or employees of mortuaries as insurance agents is amply safeguarded by "The Insurance Law". In holding the statute invalid in the *Liggett Case*, the Supreme Court concluded: "The act under review * * * [fol. 199] deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'"

In fact, the defendants assume that the *Liggett Case*, if followed by this Court, would require the granting of plaintiffs' prayer. However, they point to Mr. Justice Holmes' dissent and assert that we should conclude that the present constituency of the Supreme Court will follow the dissenting opinion of Mr. Justice Holmes rather than the majority opinion of the Court. We cannot agree to the view that lower courts may review the decisions of the Supreme Court, and, following the predilection for individual justices, subvert the salutary doctrine of *stare decisis* into a study of personalities rather than a becoming observance of the accepted majority decisions of the Supreme Court. We are firmly of the opinion that if the decisions of the Supreme Court are to be reversed, that function should be reserved to the Supreme Court itself. Any other rule would bog down the judicial processes hopelessly in those quagmires of uncertainty which would justly lay the District Courts open to the gravest public censure. It is not our duty to speculate on what the Supreme Court as now constituted may do on an appeal in this case. It is our duty to decide the case as we think it ought to be decided on the decisions as they now stand.

Hauzer v. North British & Mercantile Ins. Co., 206 N. Y. 455, 100 N. E. 52, 42, LRA (N.S.), 1130, is also in point and

its reasoning is aptly applicable to the case we have for decision. In that case the Court said: "As it was intimated below, following the suggestion in People v. Lange, 197 [fol. 200] N. Y. 143, 90 N. E. 451, 27 L.R.A. (N.S) 528, 18 Ann Cas. 474, the legislation, now in question, must have been promoted in the interests of those engaged in the insurance brokerage business, alone, or in connection with a real estate brokerage business, rather than with any view of the public welfare. And see People v. Gillson, 109 N. Y. 389, at page 399, 17 N. E. 343, 4 Am. St. Rep. 465. Why should those who wish to engage in the business of soliciting and placing insurance not be permitted to conduct it as incidental to, or in connection with, any other innocent occupation, except that of real estate brokers? Where the Legislature may prohibit a business, or an occupation, it may prescribe conditions upon which it may be conducted; but, if the business, or occupation, be useful to the citizen, and it be lawful, the Constitution both of the state and of the nation, guarantees to him the right to pursue it freely, and any arbitrary restriction upon its pursuit should be condemned as an invasion of the guaranty. In varying language, but with the same thought, in very many cases, this court has pointed out that the constitutionality of an act is to be tested by its effect upon the citizen's right freely to pursue lawful occupations; that a statute under the guise of an exercise of the police power cannot arbitrarily interfere with that liberty of pursuit; that the equal protection of the laws mean- equality of opportuntiy to all in like circumstances; and that classification to be valid must not be arbitrary and discriminate against persons without a basis in reason. These principles have become familiar from frequent statement in the decisions and need no citation, nor discussion, of the cases here. They have become constituent elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the law permits.

[fol. 201] "The statute before us goes far beyond what is proper regulation and is prohibitory, in preventing a person from pursuing the occupation of an insurance broker, except as his principal business, or as an adjunct to a real estate business. To use the language in the case of Wyne-

hamer v. People, 13 N. Y. at page 399, this statute 'passes the utmost limit of regulation, and does not even wear a disguise.' The restriction is not in the public interests; it is obviously in the interests of the class, either of insurance, or of real estate brokers. The insurance underwriters are not forbidden to transact their business through brokers; they are required to limit it to the class of brokers authorized by the statute. The plaintiff is a lawyer, and presumably the nature of that occupation should well qualify him to make insurance contracts, and there are many mercantile occupations, which certainly cannot be deemed to affect the person's fitness to solicit, or to place, insurance. But this statute would prevent them from adding to their earnings by pursuing that occupation. To concede the validity of this statute would be to concede a power to the Legislature in the guise of a regulation to destroy a lawful business. This plaintiff has built up a brokerage business, in connection with his other occupation—as many, presumably, other have done holding, similarly, fire exchange brokers' certificates. But, under this statute, he is compelled to refrain from it, unless pursued under conditions which involve the sacrifice of that other occupation. Arbitrarily, the statute interferes with a citizen's business pursuits and, by an unreasonable discrimination, deprives him of that equal opportunity, which the Constitution guarantees to him. What is there in the calling of an insurance agent, or broker, which demands any special training, or knowledge, not readily to be acquired by any business man? [fol. 202] That he should be qualified by antecedents and in character for engaging in an occupation calling for some degree of trustworthiness may be true; as it is, also, true that the nature of this occupation, differing from other mercantile pursuits, calls for an acquaintance with certain rules by which it is governed. But trustworthiness is the common property of men, and success in placing insurance will depend upon the industry, honesty, and competence, which the broker displays."

The challenged statute affects no other insurance company than the plaintiff insurance company, nor the agents of any insurance company other than the agents of the plaintiff company. As heretofore pointed out, it would deny to any insurance company, and an officer of an insurance company, the right to own an interest in, or operate

a mortuary, and would deny to an undertaker, or an employee of an undertaker, the right to be licensed as an insurance agent. One of counsel for defendants frankly admitted in open court that he knew of no insurance company, or of any officer or agent of any insurance company, who desired to go into the undertaking business.

The challenged statute forecloses plaintiff Lanford from pursuing further his established insurance business, simply because he is also employed by a mortuary; it likewise makes it impossible for plaintiff insurance company to have undertakers and employees of mortuaries licenses as its agents, though this was its established method of operation; it is, arbitrary and discriminative and designed to destroy, and will destroy, the plaintiff insurance company and its business, and deprive it and its agents of the right to do business in a lawful manner, and pursue a necessary, useful, and lawful gainful calling, with no discernible public evil to be corrected, or public benefit to be achieved; and for these reasons it violates the due process and equal [fol. 203] protection clauses of the United States Constitution.

For the reasons herein stated it is our opinion that the injunctive relief prayed for should be granted. A judgment to this effect will be filed herewith.

[fol. 204] APPENDIX A

AN ACT making it unlawful for any life insurance company, its officers, agents, or employees, to own, operate or maintain a funeral or undertaking business; or contract or agree with any funeral or undertaking establishment to conduct the funeral of any person insured by such insurance company; or for any funeral or undertaking establishment, its agents, officers or employees to be licensed as agents, salesmen or solicitors for any life insurance company doing business in this state.

Be it enacted by the General Assembly of the State of South Carolina.

Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or

undertaking establishment, or to permit its officers, agents, or employees to own, operate, or maintain any such funeral or undertaking business.

Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

Section 3. It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof, to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.

Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard [fol. 205] labor for not exceeding six (6) months, or both, such fine and imprisonment within the discretion of the courts.

Section 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Section 6. This Act shall take effect upon its approval by the Governor.

Approved the 14 day of April, 1948.

Appendix B

In 1937 the President of the National Association of Insurance Commissioners appointed a committee composed of the actuaries of the Insurance Departments of five Different States with one representative each from the Actuarial Society of America, and the American Institute of Actuaries, to study and report upon the need for a new mortality table, because of "the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality'," as he phrased it. The report, outlining the scope of its investigations in detail, and presenting the

committee's conclusions and recommendations, supported by elaborate and detailed scientific analyses, graphs, charts statistical tables, comparisons of methods of valuation, and a digest of the statutory provisions of various states was adopted by the Association at its meeting at Biloxi, Mississippi, December 8, 1939. The report recommended legislation which it "deemed in the public interest, because of its encouragement to strengthening of reserve bases in accordance with modern tables of mortality, lower rates of interest, and more conservative methods of calculation." In June, 1941, the report specifically recommended legislation revising the artificial relationship between mortality and interest standards, liberalized cash surrender values, and extended insurance provisions, and the adoption of the "1941 Standard Industrial Mortality Table" and discarding the "American Experience Mortality Table," widely in use, especially in the South, and used by all insurance companies writing industrial life insurance in South Caro-
[fol. 206] lina *except the plaintiff insurance company*, unrevised since 1870, and necessarily failing to reflect the immense gains in life expectancy brought about by the many discoveries and scientific advances in the medical and surgical realm, as well as the discovery and development of the so-called "magic drugs", and the new methods of treatment, and the quicker hospital and medical relief made possible by the immense improvements in transportation. These reports are known in the terminology of insurance men as "The Guertin Reports."

A true copy: Attest.
Ernest L. Allen, Clerk, United States District Court
for the Eastern District of South Carolina. (Seal)

[fol. 207] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. Russel Floyd and William E. (William P.) Lanford, Plaintiffs,

v.

HONORABLE JOHN M. DANIEL, as Attorney General of South Carolina, Honorable L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, Defendants

Finding of Fact and Conclusions of Law—Filed August 12, 1948

C. A. 1918

In compliance with Rule 52(a) of the Rules of Civil Procedure, the Court finds the facts specially, and states its conclusions of law thereon, as follows:

FINDINGS OF FACT

1. The plaintiff Family Security Life Insurance Company is a legal reserve life insurance company, created under the laws of South Carolina, and licensed by its Insurance Department to engage in the life insurance business, and has its Home Office at Spartanburg, South Carolina. It has complied with all valid statutory and regulatory provisions promulgated for the governance of life insurance companies in South Carolina. The Plaintiff company issues two types of policies, (1) a whole life policy, and (2) a twenty-payment life policy. Its maximum policy is of the face value of $750.00, and its minimum, $125.00. Its President and two other of its directors are "ex-G.I.s," as the honorably discharged veterans of World War II are popularly called.

2. Its authorized capital is $50,000.00; its subscribed capital is $25,000.00; its paid-in capital is $16,000.00, and it has a paid-in surplus of $64,000.00, making the aggregate capital account $80,000.00.

3. It has 34 stockholders, all except one being directly or indirectly connected with a mortuary or undertaking estab-

lishment as stockholder, owner, manager, or employee. The respective mortuary establishments with which they are affiliated are located in seventeen different counties of the State; it grants no exclusive agency in any community; [fol. 208] anyone in the undertaking business may become an agent or stockholder.

4. It has 79 agents, 51 of whom are directly or indirectly connected with a mortuary or undertaking establishment. All were relicensed by the Insurance Commissioner in March, 1948, for the period beginning April 1, 1948, and ending March 31, 1949, after examination required by the insurance laws of South Carolina, hereinafter referred to.

5. The plaintiff J. Gordon Floyd is a stockholder and director and agent of the plaintiff insurance company, as well as its president, and original promoter. He has $13,000.00 invested in the capital and surplus, and owns one-half the capital stock of J. F. Floyd Mortuary, Inc., and is its president and manager.

6. The plaintiff W. Russel Floyd is a stockholder and director in the plaintiff insurance company, and owns one-half the capital stock of the J. F. Floyd Mortuary, Inc., and is one of its directors. His investment in the plaintiff insurance company is $13,000.00.

7. The undertaking business now conducted by the J. F. Floyd Mortuary, Inc. has been continuously conducted in Spartanburg, South Carolina, by the Floyd family for sixty-two years. The mortuary has an investment of $23,000.00 in the capital and surplus of the plaintiff insurance company.

8. The plaintiff William E. (William P.) Lanford is a stockholder, director and agent of the plaintiff insurance company, is an owning partner of the Lanford-Boyter Mortuary in Woodruff, South Carolina, and is employed as its manager. While so employed by the Lanford-Boyter Mortuary as its manager, he was licensed by the South Carolina Insurance Commissioner as an agent for the Equitable Life Assurance Society of the United States in April, 1947; and is licensed as an agent to write health and accident insurance with hospitalization and death benefits in accidental cases for the North American Assurance Society of Virginia, Inc. There is no evidence that *my* improper advantage of

any kind was taken of any assured, either as the result of the issuance of this type of insurance, or the fact that the [fol. 209] agent selling it was an employee of a mortuary.

9. The defendant John M. Daniel is Attorney General of South Carolina, with the authority and duty to direct and control legal proceedings on behalf of the State.

10. The defendant L. George Benjamin is Insurance commissioner of South Carolina, and the head of its insurance department. He has the duty and authority to enforce all laws relating to insurance, with broad powers of supervision and regulation of the companies, their agents, their policy contracts, their reserves, and methods of business, as more fully stated hereinafter.

11. The defendant B. B. Brockman, is the Sheriff of Spartanburg County, South Carolina, and its chief law enforcement officer.

12. This action arises under Section 1 of Article XIV of the Constitution of the United States.

13. The Amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00. The investments of the personal plaintiffs in the plaintiff insurance company are in jeopardy, as well as their right to do business and pursue a lawful, useful and necessary gainful occupation. The corporate plaintiff's good will, working organization, and character as an exceptionally successful going concern are involved. Plaintiffs have no adequate remedy at law.

14. Since 1929, (36 S. C. Stat., 234; Section 7984 S. C. Code of 1942; Section 65, Article 1, of the Act adopted May 12, 1947, known as "The Insurance Law," 45 S. C. Stat., 350) it has been unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rendered. It is stipulated in writing that the plaintiff J. Gordon Floyd was instrumental in obtaining in its present form the incorporation of this provision in the insurance law of South Carolina, adopted in 1947. (45 S. C. Stat. p. 350, sec. 65)

[fol. 210] 15. In 1937 the President of the National Association of Insurance Commissioners appointed a committee

composed of the actuaries of the Insurance Departments of five different States with one representative each from the Actuarial Society of America, and the American Institute of Actuaries, to study and report upon the need for a new mortality table, because of "the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality'," as he phrased it. The report, outlining the scope of its investigations in detail, and presenting the committee's conclusions and recommendations, supported by elaborate and detailed scientific analyses, graphs, charts, statistical tables, comparisons of methods of valuation, and a digest of the statutory provisions of various states was adopted by the Association at its meeting at Biloxi, Mississippi, December 8, 1939. The report recommended legislation which it "deemed in the public interest, because of its encouragement to strengthening of reserve bases in accordance with modern tables of mortality, lower rates of interest, and more conservative methods of calculation." In June, 1941, the report specifically recommended legislation revising the artificial relationship between mortality and interest standards, liberalized cash surrender values, and extended insurance provisions, and the adoption of the "1941 Standard Industrial Mortality Table" and discarding the "American Experience Mortality Table," widely in use, especially in the South, and used by all insurance companies writing industrial life insurance in South Carolina *except the plaintiff insurance* company, unrevised since 1870, and necessarily failing to reflect the immense gains in life expectancy brought about by the many discoveries and scientific advances in the medical and surgical realm, as well as the discovery and development of the so-called "magic drugs," and the new methods of treatment, and the quicker hospital and medical relief made possible by the immense improvements in transportation. These reports are known in the terminology of insurance men as "The Guertin Reports."

[Vol. 211] 16. In about 1941, the plaintiff J. Gordon Floyd, who had been a funeral director in Spartanburg, South Carolina, for many years, knowing that one of the heavy expense items in a mortuary, especially in the South, is the large volume of "charity funerals", and stimulated by the many and constant inquiries from his clientele as to how they might arrange and pay for their funeral and burial expenses while they were living and earning, and because many of

them wished to make deposits to be held in trust by the mortuary to bury them when they died, and knowing the great anxiety among the wage earning and lower income groups to be assured that their funeral and burial expenses would be provided for and not be a burden on the surviving family, which anxiety was accentuated during the days of the depression in the 30s, began to investigate the feasibility of writing legal reserve life insurance through funeral directors and mortuaries. Convinced of the soundness of this method of writing insurance, and of its benefits and advantages to the policy holders, he and Arthur Mackey, funeral directors of Greenville, acquired the Pee Dee Life Insurance Company, changed its name (by statutory amendment) to Family Security Life Insurance Company, and was ready to inaugurate the plan, when at the commencement of World War II, he entered the armed service and continued in the army for four years. Though the company was licensed annually since 1941, it remained inactive until his discharge, when he resumed his active interest in the plan. He employed O. Charles Honig to study the operations of the plan in states where such companies had been doing business. Mr. Honig spent more than eight months in his investigation, discussing the plan with insurance executives and funeral directors, studying the actual operations of companies which had put the plan in effect, particularly, the experience of the Family Fund Life Insurance Company of Georgia, which, in seven years of operation, had acquired 200,000 policyholders and had in force $50,000,000.00 of insurance. Its maximum policies are in the sum of $500.00 and the minimum, $100.00. He reported a wide-spread public approval and acceptance of the plan [fol. 212] and that companies operating on the identical plan of the Family Security Life Insurance Company were doing business in North Carolina, Texas, California and Washington, and that he found a wide-spread public demand for insurance written by this method and on this plan, giving these reasons:

A. The people feel their local funeral director is more permanent in their community than is the average industrial insurance agent, who collects his weekly "debit" and who is constantly being replaced by another agent unfamiliar to the policyholders. Evidence of this public demand is found in the alarmingly high lapse ratios common to weekly

industrial life insurance. (During 1946 South Carolina industrial life insurance companies issued $201,000,000.00 in new insurance and lapsed $126,000,000.00)

B. Funeral homes are normally among the oldest established businesses of a community. It becomes a family tradition to use a certain funeral director, just as one uses the family doctor or joins the Church of his parents or grandparents. This feeling towards the funeral director arises largely because he has fulfilled the confidence placed in him. Since life insurance is an auxiliary service to his principal business they feel that his insurance policies must be reliable.

C. The people regard it logical to carry their insurance against the risk of unexpected burial expenses with the funeral director or hospital insurance with their hospital or doctor.

D. Funeral directors . . . are frequently approached by people who desire to pre-arrange their funeral service, and pay for it in advance. Since the funeral director has not the facilities or knowledge to handle investments, these people would have to pay the full amount of their pre-arranged service. Through the mechanics of life insurance cost of such pre-arrangements can be materially reduced because of guaranteed interest rates, and actuarial expectancy.

[fol. 213] E. People of substantial means with large amounts of insurance are interested in a small-amount policy through their funeral director to prevent their survivors from overspending on their funeral arrangements and service.

17. Mr. Hönig became Vice-President of the plaintiff insurance company, he and Mr. Floyd arranged the set-up as disclosed by the company's by-laws set out below, and then proceeded to call on nearly all the funeral directors and undertakers in South Carolina, offering to each and all of them the right to become stockholders in and agents for the company, at the same per share price ($1.00 par, plus $4.00 surplus) Mr. Floyd had paid, notwithstanding the work that had been done and the expense incurred in building up the business to where its prospective earnings were attractive. One share of stock entitled any funeral

director or undertaker to become an agent. A part of their sales argument was Article 4 of the Company's by-laws, to which the prospective purchasers were asked to direct their attention. The following five sections comprise Article 1 of the by-laws:

"Section 1. Objectives. The objectives of the company are those of providing the people of South Carolina with a sound, economical, attractive plan and method for prepaying funeral expenses, through the mechanics of life insurance, and providing a permanent protection against the operation of burial rackets in the State of South Carolina.

"Section 2. Method of Operation. The company shall offer its insurance through South Carolina Funeral Homes and Funeral Directors who own stock in the company and serve as its exclusive agencies and principal agents, respectively.

"Section 3. Payments in Cash. All policies offered by the Company shall be on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner, and claims paid on the company's policies of insurance shall be made in cash and [fol. 214] shall permit the payee complete freedom of choice in selection of funeral home and in selection of type and cost of merchandise and services.

"Section 4. Restriction on Activities. The company at no time will enter the funeral business, nor will it, at any time, or under any circumstances, own or lend money on stock, real estate, equipment, paraphernalia, rolling stock, merchandise or any other assets owned or used by any funeral home in the conduct of its funeral business.

"Section 5. Restriction on Stock Ownership. No one funeral home may own more than forty-nine per cent of the company's outstanding stock.'"

18. As hereinbefore stated, 32 funeral directors or undertakers, in addition to the J. F. Floyd Mortuary, Inc., became stockholders, and they and some of their employees, 51 in all, after examination required by the insurance law of South Carolina, hereinafter summarized, became duly licensed agents.

19. The individual plaintiff William E. (William P.) Lanford was amongst those thus licensed as an agent of the plaintiff insurance company.

20. Mr. Wallace, an actuary for Palmetto State Life Insurance Company and others, as well as for the Family Fund Life Insurance Company of Georgia, and the plaintiff company, and also Mr. Dana, Chief Actuary of the Insurance Department of South Carolina have pronounced the policy contracts of the plaintiff company sound as to reserve basis, mortality table, non-forfeiture values, interest rate assumed, premiums charged, and cash surrender values, and in all other respects.

21. The plaintiff company, alone, among all the companies writing industrial life insurance in South Carolina, has adopted these recommendations from the "Guertin Reports":

(a) The 1941 Standard Industrial Mortality Table, which is the most recent mortality table available, and reflects improvements in mortality as brought about by improve-[fol. 215] ments in medical science, living conditions, etc.

(b) The Commissioners' valuation method for determining policyholders' reserves and non-forfeiture values, the general effect of which method is to establish higher policyholders' reserves than the former methods used by industrial life insurance companies in South Carolina.

(c) An assumed interest rate within the earning capacity of the company based on current market and investment conditions.

These are in the interest of the policyholder.

22. The premium rates of the plaintiff company are more favorable to policyholders than the rates of other industrial life insurance companies. The cash surrender and extended insurance values are greater than those of other industrial life insurance companies in this State, and it alone writes policies up to age 74; no other company writes policies above age 65.

23. After full disclosure to the Insurance Commissioner of the plan and method to employ funeral directors as agents of the plaintiff insurance company, and after full discussion with him by Mr. Floyd and Mr. Honig, he said he saw "no

objection to its method of employing funeral directors as its agents", and, as stated hereinbefore, in late March, 1948, relicensed the plaintiff company for the period from April 1, 1948 to March 31, 1949, as well as all of its agents, including the 51 who were connected with mortuaries or undertaking establishments.

24. While the plaintiff company has agents not connected with mortuaries or undertaking establishments, it is the only life insurance company operating in South Carolina emphasizing selling insurance through owners, operators, and employees of such establishments; and the only one whose officers and many of whose agents operate and maintain such establishments.

[fol. 216] 25. The General Assembly of South Carolina, after a study of the subject commencing in or before 1945, revised the insurance laws by an Act adopted May 12, 1947, to be known as "The Insurance Law", sub-headed in thirteen articles dealing comprehensively and in detail with every type of insurance, insurance company, fraternal benefit associations, the policy contracts, methods of business, reserves, agencies, and agents,—in fact, with every phase of insurance, including (Articles 12 and 13) the prevention and unfair methods of competition, and unfair and deceptive acts and practices in the business of insurance, whether defined or undefined by the Act. (Act #322 of the S. C. General Assembly of 1947; 45 S. C. Stat. 322-472).

26. Among the pertinent provisions of this Act are: The establishment of the Insurance Department charged with the enforcement and execution of laws relating to insurance; an Insurance Commissioner as Chief Officer, with deputies, a Chief Actuary and other Actuaries, and a full staff of Examiners, Clerks, and other employees; requiring the Commissioner to see that all laws governing insurance or relating to the insurance business are executed, giving him power to that end to make rules and regulations, and to modify, amend or withdraw them; to require reports from insurance companies on blank forms to be devised and furnished by him, to secure full information as to the standing — companies; to institute and prosecute violations of the Act; forbidding that the Secretary of State shall issue a Charter to any insurance company or permit a foreign insurance company to do busfness without the written ap-

proval of the Commissioner; authorizing the Commissioner to grant approval or permits or to make any order affecting any insurer, agent or broker within the limits of the broad discretion the Act confers on him; empowering the Commissioner to investigate charges and to hold hearings, and decide the matter at issue (subject to review by the Court), to subpoena witnesses, enter premises, administer oaths, [fol. 217] to punish for contempt; "every insurance company doing business in this State shall be licensed and supervised by the Commissioner"; he may examine companies, and in addition to the annual reports required by law, may require special reports; must, before licensing any insurance company, require an oath of compliance from its president; must, before licensing a company, determine that its reserves are adequate to protect the policyholders, and as to a domestic company "determine that the reserve basis to be used . . . will be adequate" to that end; impose the penalties prescribed by the Act for violations, when he determines, after hearing, that there has been a violation; assess the costs against the offending company, and revoke its license on failure to pay; prevent discriminations, rebates, or favoring inducements as between insureds of the same class and risk; must approve policy contracts, reserves, methods of business, and may revoke the license on determining from investigation that the company is in unsound condition, or has failed to comply with the law, or if, in case of life insurance companies, its assets are less than liabilities exclusive of capital, or if its officers or agents refuse to perform any legal obligation with reference to the investigation, revoke also the licenses of its agents; and he may revoke the license of any company failing to pay a judgment.

27. Section 107 of Article 1 of the Act (45 S. C. Stat. 364) deals with licensing insurance agents. It provides that each shall stand an examination as prescribed by the Commissioner, and, on oath, on forms furnished by the Commissioner, in addition to name, age and residence, furnish information as to his qualifications for a license, his knowledge of the State Insurance Laws, what experience in insurance he has had, whether he has ever been in default in any indebtedness to any insurance company, or ever had an agent's contract cancelled, and whether he has ever had a license suspended, revoked, or refused by any State, and submit a complete history of his employment for three

years before the date of his application. Any license granted expires March 31 of each year.

[fol. 218] 28. The second paragraph of Section 107 provides that "before issuing such license, the Commissioner shall determine, from the examination, that the applicant . . . is a competent and trustworthy person to engage in the classification of insurance business he intends to engage in"; and empowers the Commissioner to revoke any license after ten days' notice or to refuse a reissue when it appears that an agent has violated the law, or willfully deceived or dealt unjustly with the people of this State. Article 12 of the Act (45 S. C. Stat. 463) regulates trade practices in the insurance business, defines unfair methods of competition, or deceptive acts or practices as: (1) misrepresentation and false advertising of policy contracts, making, issuing or circulating any estimate, illustration, circular or statement misrepresenting policy terms, or the advantages promised, or as to financial condition, legal reserve, or using a name misrepresenting the true nature of the policies, or inducing a policyholder in another company, by misrepresentation, to lapse or forfeit his insurance; (2) making or publishing orally, by radio, newspaper, circular, pamphlet, letter, or poster, or in any other way any statement with respect to the insurance business, or any person in the conduct of his insurance business, which is untrue, deceptive or misleading; (3) making a false statement or one that is maliciously critical of the financial condition of an insurer; (4) boycotting, coercion, or intimidation tending to result in restraint of or monopoly in the insurance business; (5) filing or publishing a false statement of financial condition, or making false entries in records or reports; (6) issuing, or permitting agents, officers or employees to deliver agency company stock, or capital stock, or contracts promising profits, as an inducement to insurance; (7) unfairly discriminating between individuals of the same class, and equal life expectancy in any life insurance contract; (8) giving rebates or special favors to induce insurance.

[fol. 219] 29. Sections 5 through 8 of Article 12 confer upon the Commissioner the power to examine and investigate into the affairs of every person engaged in the insurance business, to determine whether he has been or is engaged in any unfair method of competition, or any unfair

or deceptive practice, and provides a plenary, prompt and adequate procedure for the holding of hearings, the attendance of witnesses, the production of records, and for the issuance of "Cease and Desist" orders by the Commissioner where he finds the existence of any such. Section 9 of Article 12 prescribes the procedure to be followed by the Commissioner as to unfair methods of competition and unfair or deceptive practices not defined in Section 4. Section 11 of Article 12 punishes the violation of a "Cease and Desist" order of the Commissioner by a fine of $50.00, except, if the violation be found wilful, the penalty may be $500.00.

30. "Industrial Insurance," as embedded in the nomenclature of life insurance, signifies a policy of $1,000.00 or less with premiums payable weekly, semi-monthly, or monthly, and the words are written on most policies of that type merely as descriptive. Industrial policies are written on the lives of wage-earners and their families, the so-called industrial population. Premiums are most often collected by agents calling at the homes of the policyholders. (Chapter VIII, page 95 of the Guertin Reports on "The need for a new mortality table".)

31. Many of the smaller life insurance companies concentrate upon this type of insurance, and many of the largest life insurance companies have an "Industrial Department," with local offices and local superintendents in industrial communities where a large number of agents have "Debits," routes where the local agent calls at the homes or places of business of the holders of policies he has written to collect premiums.

32. The plaintiff insurance company provides for the payment of premiums monthly, and they may be brought in person by the insureds, or mailed to, the agency office of the mortuary through whose owner or employee the policy was [fol. 220] written. All insurance companies use an envelope or "jacket" in which their policies are placed, which carry identifying information readible at a glance. The plaintiff company uses a "jacket" which carries the name of the representative who sold the insurance, the name "Family Security Life Insurance Company," and the words "Policy of Guaranteed Protection for Pre-payment of Funeral Expenses," the name of the insured, the address, the amount

of the monthly payments, and that they are payable on the first day of each month to (the name of the funeral home through which the policy was written); also a note addressed "To the Policy Holder," saying that by purchasing the policy they made a valuable addition to the program of family security; that the company stands ready at all times to cooperate in keeping the profection in line with the needs, and inviting communication with the company's nearest representative if changes are desired. A further legend on the jacket is: "Remember, your first duty is family security. The Family Security Life Insurance Company is owned and operated by South Carolina Funeral Directors for the People of South Carolina."

33. As the business of the plaintiff company increased rapidly its competitors became active. At meetings of agents of the competing insurance companies, pressure for legislation to destroy plaintiff company and to proscribe its agents was agreed upon. Division developed, too, among the morticians themselves and some of them joined with the competing insurance companies in promoting special legislation intended to desfroy plaintiff company and its business. As a result of this pressure, the Legislature of South Carolina duly enacted, and the Governor approved on April 14, 1948, the Act in question, which reads as follows: (Omitting the title)

"Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, *or to permit its officers, agents,* [fol. 221] *or employees to own, operate or maintain any such funeral or undertaking business.*

"Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker, or mortuary to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

"Section 3. *It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for*

any life insurance company, corporation or association doing business in this State.

"Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by a fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard labor for not exceeding six (6) months, or both, such fine and imprisonment within the discretion of the Courts." (Emphasis added.)

34. The Act affects no other insurance company than the plaintiff insurance company, nor the agents of any insurance company other than the agents of the plaintiff company; it was designed to destroy the plaintiff insurance company; this statute foreclosed plaintiff Lanford from pursuing further his established insurance business, simply because he was also employed by a mortuary; it likewise made it impossible for plaintiff company to license employees of mortuaries as its agents, though this was its established method of operation.

35. Counsel for defendants admitted in open court that he knew of no insurance company, officer or employee of any insurance company who desired to go into the mortuary business.

[fol. 222] 36. The Insurance Commissioner and his Chief Actuary approved the policy contracts of the plaintiff insurance company in late February, 1948. Prior to February 17, 1948, it had issued only two policies in the amount of $250.00 each. Its volume of business, as stipulated by the parties to this action is shown by the following tabulation in the stipulation:

Date	No. Policies	Amount of Insurance
March 1, 1948	91	$40,375.00
March 27, 1948	481	156,750.00
April 10, 1048	1071	338,750.00
April 17, 1948	1484	453,500.00
April 24, 1948	1876	563,750.00
May 1, 1948	2350	709,000.00
May 8, 1948	2824	838,375.00

37. On February 9, 1948, Mr. A. M. Orgain, President of the Life Underwriters Association of South Carolina, sent out a circular letter advising that the House Bill had been

introduced making it unlawful for any life insurance company to own, operate, or maintain a funeral or undertaking business, or for any officers, agent, or employees of such business to be licensed as agents, salesmen or solicitors for any life insurance company, and urging their immediate support of the bill, and asking that each group of underwriters addressed, call upon its members to "contact their representatives in the Legislature."

38. In its issue of February 26, 1948, reporting a meeting of insurance men, and their voting to organize a "Life Underwriters Association of Union County," the Union Daily Times said that Mr. Orgain, President of the South Carolina Life Underwriters Association, addressed the meeting, saying that if the bill did not pass, the livelihood of 4200 men would be endangered.

39. Mr. Orgain later appeared before the Senate Committee of Banking and Insurance to speak in favor of the bill, and said that the Union Newspaper had not quoted him correctly, and that he had said "this would affect approximately 4200 life insurance men in the State of South Carolina," and that the life insurance men were one hun-[fol. 223] dred per cent against the method of writing insurance proposed by the plaintiff insurance company. He said further: "I tell you again . . . as I have admitted before every group that I have spoken that they have a life insurance company that is organized under the State law, and has met every law that is on the books, and they are running on the Commissioner's Standard of arriving at rates, and we are not in any way shape or form or fashion attacking the life insurance company's proposal to do this. We are attacking . . . the method of distribution." He also testified as follows: "Senator Mozingo: * * * Do you have any single illustration of any policy holder under the operation of this plan who has been abused, cheated, defrauded, or anything else, or any complaint of any policy holder? Mr. Orgain: No, sir. Senator Mozingo: I am not representing the funeral interest, but I have had complaints in my office about insurance companies. I just wondered if you had any specific illustration in South Carolina against the mortuary insurance business? Mr. Orgain: No, sir."

40. Mr. Nat Turner appeared before the Committee saying that he represented Carolina Life Insurance Company,

which is engaged in the industrial life insurance business and has been for forty years, and that his company was in favor of the passage of the bill, and hoped "that this position on our part is not actuated solely because of the monetary gains that we might receive over a period of years by keeping one more insurance company out of business . . . Insurance companies have stated that they are in favor of the bill's passage . . . I understand that the agents of our company have expressed favor with the bill, and disfavor with the idea of business being written through undertakers and through mortuaries."

41. Mr. McDougald, an undertaker of Anderson, South Carolina, and Mr. Ward, attorney for Mr. McAfee, an undertaker of Greenville, South Carolina, testified before the Senate Committee during the hearings on the bill, favoring [fol. 224] its adoption. Both said that "5% for collection" was inadequate compensation to the funeral director. (Tr. page 11, and page 24.) In reply, Mr. Honig, Vice President of the plaintiff insurance company, pointed out the error in the 5 per cent impression they had, and stated that "it is not 5%, it is 15%." (Tr. page 64.)

42. The insurance Commissioner relicensed the plaintiff insurance company, and all its agents, including the 51 connected with the undertaking or mortuary business, as of March 31, 1948. He thereby determined and declared that these 51 agents were "competent and trustworthy persons to engage in the classification of insurance business they intended to engage in."

43. The Court recognized the age-old dread of pauper funerals prevailing among the wage-earning and low income groups, and the corresponding anxiety that their families be spared this as well as the burden of funeral and burial expenses; and that "Industrial Insurance" is primarily designed to insure the prepayment of these expenses in small installment payments, while the earning capacity is unimpaired.

44. Thus far the plaintiff insurance company has paid two death claims. In one case the deceased insured was buried by the mortuary through whose agency the policy was written; and the other, the deceased insured was buried by a competing mortuary, who had no connection with the plaintiff insurance company.

45. The record shows that in one instance at least (and the record does not indicate whether this case is instanced as an isolated example or as illustrative of a common practice) the agent of the insurance company selling this type of insurance was an employee of a mortuary. The record also discloses that, M. W. Bobo, S. of Spartanburg, South Carolina, for more than twenty-five years was an undertaker competing with the Floyd Mortuary, and during the same time he was also licensed as an agent for the Woodmen of the World, selling life insurance policies issued by the [fol. 225] Woodmen of the World. So far as the record shows, no improper advantages of any kind were taken of any assured, or of the fact that an agent selling it was connected with a mortuary. The record shows that the Floyd Mortuary obtained as many, if not more, Woodmen of the World funerals than did its competitor Bobo Undertaking Company.

46. The statute in question corrects no discernible public evil, and no public benefit is achieved by it.

47. The Hinsurance Law'' (45 S. C. Stat. 322-472) is ample to correct any evils that defendants contend may result from the operation of the plaintiff insurance company's business, or the licensing of its officers and employees as insurance agents, or the licensing of any funeral director or undertaker as insurance agents.

Conclusions of Law

1. Federal jurisdiction and equity jurisdiction exist.

2. The statute in question is arbitrary and discriminative and designed to destroy, and will destroy, if enforced, the plaintiff insurance company and its business, and deprive it and its agents of the right to do business in a lawful manner, and pursue a necessary, useful, and lawful gainful calling, with no discernible public evil to be corrected, or public benefit to be achieved, and for those reasons it violated the due process and equal protection clauses of the United States Constitution.

3. Plaintiffs are entitled to the injunctive relief prayed for and entry of appropriate judgment is directed accordingly.

August 11, 1948.

——— ——— ———, United States Circuit Judge. (S.) C. C. Wyche, United States District Judge for the Western District of South Carolina. (S.) George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina.

A True Copy: Attest.
Ernest L. Allen, Clerk, U. S. District Court. (Seal.)

[fol. 226] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

C. A. 1918

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSEL FLOYD AND WILLIAM E. (WILLIAM P.) LANFORD, Plaintiffs,

vs.

HONORABLE JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, HONORABLE L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, Defendants

ORDER GRANTING PERMANENT INJUNCTION—Filed August 12, 1948

Upon the pleadings, stipulations and evidence submitted by the parties at the hearing in this Court,

It is ordered and adjudged this *11th* day of *August*, 1948, for the reasons set forth in the Opinion of the Court filed herein that a permanent injunction be issued enjoining the defendants and each of them, their agents, deputies and subordinates, from taking any steps or proceedings of any nature whatever, criminal or otherwise, against the plaintiffs, the plaintiff insurance company's officers, agents or employees, to enforce the provisions of a statute enacted by the General Assembly of South Carolina, approved April 14, 1948, entitled, "An Act making it unlawful for any Life Insurance Company, Its Officers, Agents, or Employees to

Own, Operate or Maintain a Funeral or Undertaking Business; or Contract, or Agree with any Funeral or Undertaking Establishing to Conduct the Funeral of any Person Insured by Such Insurance Company; or for any Funeral or Undertaking Establishment, Its Agents, Officers, or Employees to be Licensed as Agent, Saleman or Solicitor for [fol. 227] any Life Insurance Company Doing Business in this State."

I dissent. (S.) A. M. Dobie, U. S. Circuit Judge.

(S.) C. C. Wyche, United States District Judge for the Western District of South Carolina. (S.) George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina.

A True Copy: Attest Ernest L. Allen, Clerk U. S. District Court Eastern District of South Carolina.

[fol. 228] File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DISSENTING OPINION—Filed August 12, 1948

Dobie, Circuit Judge, dissenting:

I think the South Carolina Statute is constitutional, so it would seem proper for me to state briefly the reasons that compel me to reach this conclusion.

Certain principles favoring this view are so well established as to require little need of citations. The police power of the State is very broad and especially is this true when, as here, the subject matter of a statute, namely insurance, is a matter of public interest. And it has also been held that the undertaking business is one of public concern. Walton v. Commonwealth, 187 Va. 275, 46 S. E. (2d) 373; State v. Blackwell, 196 S. C. 313, 13 S. E. (2d) 433. There is a primary presumption of the constitutionality of a State statute in the light of the Federal Constitution and a strong showing must be made by the party attacking the constitutionality of the statute. Where the business is one

of public concern and the State Legislature, on any reasonable ground, thinks that an evil exists which ought to be remedied, and where the legislative remedy has any rational relation to this evil, the statute is valid. Only where the statute is quite arbitrary or capricious and utterly unreasonable, should the courts strike the statute down as unconstitutional. See 16 C. J. S. ##174, 668; 11 Am. Jur., Commerce, #94, Const. Law, ## 255, 284, 303, 305; 12 Am. Jur., Const. Law, ## 567, 575, 655. See, also, Fitzpatrick v. Liquor Control Commission, 316 Mich. 83, 25 N. W. (2d) 118 (upholding a State statute forbidding the employment of women as bartenders); Dufour v. Maize, 358 Pa. 309, 56 Atl. (2d) 675 (upholding Pennsylvania Bituminous Coal Open Pit Mining Act); United States v. South-[fol. 229] eastern Underwriters, 322 U. S. 533; Merchants Liability Co. v. Smart, 267 U. S. 126.

In the very important case of Osborn v. Ozlin, 310 U. S. 53, 65-66, Mr. Justice Frankfurter stated:

> "It is not our province to measure the social advantages to Virginia of regulating the conduct of insurance companies within her borders insofar as it affects Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition. The state may fix insurance rates, *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389; it may regulate the compensation of agents, *O'Gorman & Young v. Hartford Fire Insurance Co.*, 282 U. S. 251; it may curtail drastically the area of free contract, *National Ins. Co. v. Wanberg*, 260 U. S. 71. States have controlled the expenses of insurance companies, New York Insurance Law, Consolidated Laws of New York, c. 28 #244, and Wisconsin Statutes, #201.21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N. Y.) pp. 403-18 (1906). They have also promoted insurance through savings banks; see Berman, The Massachusetts System of Savings Bank Life Insurance, Bulletin No. 615, U. S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance

business, just as it can operate warehouses, flour mills, and other business ventures, *Green* v. *Frazier*, 253 U. S. 233, or might take 'the whole business of banking under its control,' *Noble State Bank* v. *Haskell*, 219 U. S. 104, 113. If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. *LaTourette* v. *McMaster*, 248 U. S. 465. All these are questions of policy not for us to judge. For it can never be emphasized too much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

And, in LaTourette v. McMaster, 248 U. S. 465, 467-468, Mr. Justice McKenna observed:

"This contention depends upon the character of the business of insurance, and it was decided in *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, to be clothed with a public interest and subject, therefore, to the regulating power of the State. And it necessarily follows that, as insurance is affected with a public in- [fol. 230] terest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged—is an instrument of such consummation. The statute makes him the representative of the insured. He is also the representative of the insurer (*Hooper* v. *California*, 155 U. S. 648, 657), and his fidelity to both may be the concern of the State to secure. As said by the Supreme Court of the State: 'It is important for the protection of the interests of the people of the State that the business should be in the hands of competent and trustworthy persons.' And we may say that this result can be more confidently and completely secured through resident brokers, they being immediately under the inspection of the Commissioner of Insurance. The motive of the

statute, therefore, is benefit to insurer and insured and the means it provides seem to be appropriate.

"'But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise.' It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 365, 366, and cases cited; also *Bunting* v. *Oregon*, 243 U. S. 426, 437."

It seems to me that there is a very real evil in the case before us. A South Carolina statute prohibits the payment of life insurance policies in either services or merchandise. Code, 1942, #7984, 36 Stat. 234. Plaintiffs here make much of the fact that the policy is payable to a stated beneficiary and there is no contractual obligation requiring that the undertaker who was the agent writing the policy must take care of the funeral. It is very significant, though, that the policy is enclosed in a jacket-envelope. On this jacket-envelope is printed in large red capital letters: "Guaranteed Protection for Prepayment of Funeral Expenses of" followed by a blank for the name of the insured. When the policy is written, as will usually be the case, by an undertaker, the name of this undertaker will be typewritten on this jacket-envelope with a statement that the premium payments are due each month and payable to the undertaker. [fol. 231] At the bottom of this jacket-envelope is also printed in large capitals: "The Family Security Life Insurance Company is Owned and Operated by South Carolina Funeral Directors for the People of South Carolina." Then, on the face of the policy is a "Facility of Payment" Clause which would clearly justify the insurer in paying the proceeds of the policy to the undertaker conducting the funeral. I therefore think that the constitutionality of the statute could be sustained solely on the ground that in actual practice the statute plugs up a loop-hole and prevents a subtle evasion of the South Carolina law prohibiting the payment of life insurance policies in merchandise or services.

It has been held in a number of cases that a life insurance agent, in certain aspects, acts for both parties—the insurer and the insured, and we know that life insurance companies

are stressing the role of the agent as a counselor to the insured." LaTourette v. McMaster, 248 U. S. 465, 467-468. There are many situations in our case which would place the insurer-undertaker in a rather parlous position. If the undertaker who writes the policy secures the funeral, it then becomes to the interest of the undertaker-agent to have the policy paid in full. If, on the other hand, the funeral is to be conducted by some other undertaker, or this is even contemplated, the undertaker-agent has a club to compel his securing the funeral.

There is evidence in the affidavits that Mr. Floyd, in his campaign to secure undertakers as agents for his Company, stated that this insurance would be a means of confining the undertaking business in South Carolina to the undertakers who are Floyd's agents and that it would be used as a means [fol. 232] of discouraging other men, particularly veterans, from embarking upon this business. There was also some evidence in some of the affidavits that such a result had been brought about in some of the far Southern States.

The undertaker-insurance agent receives for his services in collecting the premiums 15%. Since these amounts are very small, this is a trifling consideration and the undertaker-agent is tempted to secure his real remuneration out of conducting the funeral. In one specimen policy, the monthly payment premium is $1.57 so that the undertaker-agent would receive less than twenty-five cents a month for collecting these premiums.

The undertaker-agent writing the policy knows, of course, the amount of the insurance. This affords him a strong temptation to charge for the funeral the full amount of the insurance, even where the insured is a person of very scant means. We must notice, too, that these policies will be written in small amounts for people of little economic substance and probably less intelligence, who will be putty in the hands of a strong and forceful insurer-undertaker.

There seems to me to be little merit in the suggestion of the plaintiffs that this is the only Company now engaged in this type of business in South Carolina. If these plaintiffs are successful, and if the Company writes many policies, as it seems to have done, other companies will undoubtedly be attracted to this field.

The statute is couched in general terms and applies to all undertakers or life insurance companies and their agents. If a State has a right to regulate race tracks, certainly a

statute directed at all race tracks would not be invalid merely by virtue of the fact that at the time of the enactment of the statute, there was only one race track within the [fol. 233] State.

The two cases cited by the plaintiffs most clearly in point were unduly restrictive. In Hauser v. North British Insurance Co., 206 N. Y. 455, 100 N. E. 52, the statute limited the insurance business solely to those principally engaged in that business and to real estate agents. All others, however well-qualified, were barred. In Northwestern Insurance Co. v. Fishback, 130 Wash. 490, 228 Pac. 516, the statute limited the insurance company to one agent in cities of less than 50,000 inhabitants and to two agents in cities of over 50,000, however great might be the actual need of additional agents. *Cf.* Liggett Co. v. Baldridge, 278 U. S. 105; Tyson v. Banton, 273 U. S. 418; Lakeland Highlands Co. v. Mayo, 28 F. Supp. 44, 46. In our case, the statute leaves the field of insurance wide-open, with the exception of undertakers, and for the reasons that I have stated, it seems to me that the undertaking business and the life insurance business, like oil and water, do not mix.

There has been a decided swing in the viewpoint of the United States Supreme Court in this field. Formerly, the Court seemed willing to strike down State statutes on the score that these statutes contravened the Fourteenth Amendment. The dissenting opinions of Holmes and Brandeis in the earlier cases have now been quite generally upheld. Said Mr. Justice Holmes, in his dissenting opinion in Liggett Co. v. Baldridge, 278 U. S. 105, 115: "The Constitution does not make it a condition of preventive legislation that it should work a perfect cure. It is enough if the questioned act has a manifest tendency to cure or at least to make the evil less." The modern cases have stressed the idea that questions of policy are for the legislature and not for the courts, and that courts cannot strike down a statute [fol. 234] merely because they think the statute is unwise or because it is not the best remedy for the apparent evil. These cases give wide latitude to State legislatures for experimental legislation in economic and social fields. Powell v. Pennsylvania, 127 U. S. 678; Carolene Products v. United States, 323 U. S. 18; Sage Stores v. Kansas, 323 U. S. 32. Particularly ample is this power to protect a person deemed by the legislature (as here) to be the weaker of the contract-

ing parties. See, Advance-Rumely Thresher Co. v. Jackson, 287 U. S. 283.

To repeat, when, as here, there is an evil which is reasonably apparent and when the statute has some fair relation as a remedy for the evil, the courts are powerless to interfere. It does not seem to me, in the light of what I have set out above, that we can brand the statute here as being arbitrary, unreasonable or capricious. Accordingly, I think the statute before us is constitutionally valid and the injunction sought by the plaintiffs should be denied.

A True Copy: Attest.

Ernest L. Allen, Clerk, United States District Court, Eastern District of South Carolina. (Seal.)

[fol. 235] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 27, 1948

And now come the Defendants, John M. Daniel, as Attorney General of South Carolina, L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, and considering themselves aggrieved by the decree of the District Court of the United States for the Eastern District of South Carolina, Columbia Division, entered herein on the 12th day of August, 1948, wherein the Court consisting of the Honorable Armistead Dobie, U. S. Circuit Judge for the Fourth Circuit, the Honorable C. C. Wyche and the Honorable George Bell Timmerman, District Judges, specially constituted under Section 266 of the Judicial Code, granted the plaintiffs' petition to enjoin the enforcement of a statute of South Carolina approved April 14, 1948, and entered a final judgment in favor of the plaintiffs, do hereby pray that an appeal be allowed to the Supreme Court of the United States herein for the correction of the errors complained of, and [fol. 236] for an order fixing the amount of the bond thereon from said final order and decree, the errors alleged to have been committed to the prejudice of the defendants are set

forth in the Assignments of Error which are filed herewith with this petition, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 27th day of August, 1948.

(S.) John M. Daniel, Attorney General; (S.) T. C. Callison, (S.) J. Monroe Fulmer, Assistant Attorneys General, Attorneys for Defendants.

Of counsel: (S.) Edgar A. Brown; Robinson & Robinson.

[fol. 237] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 27, 1948

It appearing to the Court that the defendants have filed their petition for appeal to the Supreme Court of the United States and have filed therewith their assignment of errors and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree in question.

It is ordered that the appeal prayed for be and the same is hereby allowed to the Supreme Court of the United States from the judgment and decree rendered and entered in this cause on the 12th day of August, 1948, and that said defendants given bond with good and sufficient security in the sum of Two Hundred Fifty ($250.00) Dollars, and that they as appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good.

[fol. 238] *It is further ordered* that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States under the Rules thereof in such cases

made and provided; and it is further ordered that citation issue returnable forty (40) days from the date hereof.

Dated this 27th day of August, 1948

(S.) George Bell Timmerman, United States District Judge, Eastern District of South Carolina.

A true copy. Attest.

Ernest L. Allen, Clerk of U. S. District Court, East. Dist. So. Carolina. (Seal.)

[fol. 239] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed August 27, 1948

Defendants file the following assignment of errors upon which they will rely on their appeal to the Supreme Court of the United States from the judgment of this Court entered August 12, 1948:

The United States District Court for the Eastern District of South Carolina, Columbia Division, erred:

1. In holding that the South Carolina statute (14 April 1948) making it unlawful for life insurance companies to own and operate funeral homes and for undertakers to act as life insurance agents is arbitrary and discriminative and therefore in violation of the due process and equal protection clauses of the Constitution of the United States.

2. In failing to hold that the South Carolina statute of 14 April 1948 was a proper exercise of the police power of [fol. 240] the State in the regulation of insurance companies, insurance agents and morticians, which are businesses and occupations clothed with a public interest.

3. In holding that the validity of the entire statute was in issue, whereas the correct ruling should have been that the issue was whether the statute deprived the plaintiffs of equal protection or due process.

4. In holding that the burden of showing that the challenged state legislation if valid is upon the defendant officers

of the State when it should have held that the plaintiffs have the burden of showing beyond a reasonable doubt that the statute violates the Federal Constitution.

5. In holding (Findings 37-41) that the fact that the passage of the challenged legislation was advocated before the Legislature by representatives of undertaking establishments and insurance companies was perti-ent on the issue of constitutionality and in failing to hold that under our system of government every citizen has a right to appear before legislative committees in support of or in opposition to proposed legislation.

6. In failing to strike as irrelevant the material contained in the plaintiffs' supporting affidavits and exhibits.

7. In adopting findings (Nos. 15-32) irrelevant to the constitutional issues involved in the cause and based on inadmissible testimony.

8. In holding that the fact that the plaintiff company was, at the time of the hearing, the only company writing burial insurance through undertakers was relevant to the issues in this cause.

9. In holding that the fact that undertakers had been licensed to write insurance in South Carolina prior to the passage of the challenged statute was pertinent in this [fols. 241-252] cause.

10. In invading the field of legitimate state legislation and substituting the judgment of a Federal Court on the wisdom of the challenged legislation for the judgment of the State Legislature to whom it has been entrusted under our Federal system.

11. In holding that the challenged statute can achieve no possible public benefit and is therefore violative of the 14th Amendment.

12. In permanently enjoining state officials from enforcing valid state legislation.

Wherefore, defendants pray that the said judgment and decree entered in the above entitled cause be reversed and

a judgment rendered in favor of the defendants and that the defendants be awarded their costs of this appeal.

(S.) John M. Daniel, Attorney General. (S.) T. C. Callison, (S). J. Monroe Fulmer, Assistant Attorney Generals.

Or Counsel: (S.) Edgar A. Brown, (S.) David W. Robinson.

[fol. 253] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed September 29, 1948

Comes now the Appellants and file their statement of points to be relied on and designate the following parts of the record (omitting duplications) as necessary for the consideration of the case:

1. The Complaint.

2. The Amendment to the Complaint.

3. The Motion to Dismiss.

4. The Answer, with the Exhibits and other attachments thereto.

5. The Motion to Strike and for Judgment.

6. The Stipulation.

7. Counsel's Stipulation of Oral Testimony taken May 17, 1948.

8. Majority Opinion.

[fol. 254] 9. Findings of Fact and Conclusions of Law.

10. Order of Permanent Injunction.

11. Dissenting Opinion.

12. Petition for Appeal.

13. Assignment of Errors.

14. Order Allowing the Appeal.

15. Appropriate Clerk's Memoranda as to other appeal papers in the Transcript.

16. Appellants' Statement of Points to be Relied Upon.

17. Appellants' designation of parts of record to be printed.

John M. Daniel, Attorney General. T. C. Callison, J. Monroe Fulmer, Assistant Attorney Generals. Edgar A. Brown, David W. Robinson, Attorneys for Appellants.

September 25th, 1948.

[fol. 255] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS RELY—Filed September 29, 1948

I

A South Carolina statute, which makes it unlawful for any life insurance company or its agents to own or operate a mortuary business and makes it unlawful for any undertaker to be licensed as a salesman for any life insurance company, does not deny the plaintiff insurance company or the undertakers who own and operate it due process or equal protection within the meaning of the Fourteenth Amendment.

II

Under our federal system the regulation of domestic businesses and professions clothed with a public interest is left to the States. The Fourteenth Amendment did not transfer this police power of regulation from the State to the Federal District Courts.

[fol. 256]

III

A South Carolina statute, applying to all life insurance companies and all undertaking establishments, if not arbitrary or discriminative within the meaning of the Fourteenth Amendment merely because only one insurance company and one group of undertakers violate the statute.

IV

Where a State statute is challenged in a Federal Court as violative of a plaintiff's right under the Federal Con-

stitution it is the duty of the Court to require the plaintiff to prove the unconstitutionality of the statute beyond a reasonable doubt. It is not the burden of defending state officials to prove the statute valid.

V

The wisdom of legislation regulating insurance companies and domestic corporations if left to the states. It is therefore inappropriate for a Federal District Court to weigh the advantages and disadvantages of the legislation in passing upon its constitutionality.

VI

Without invading the constitutional limitations of the Fourteenth Amendment a state may enact legislation forbidding undertakers from operating life insurance companies under a plan whereby policies for the "Prepayment of Funeral Expenses" are written by undertakers, premiums are collected at undertaking establishments and benefits are paid through undertakers.

[fol. 257]

VII

South Carolina has the right under its police powers to establish the policy that life insurance companies and undertaking firms should be divorced. The State's right to continue to regulate the business of insurance has been recognized by the Congress and by this Court.

VIII

On the issue of constitutionality it is not appropriate for a Federal Court to give weight to the fact that the challenged legislation was advocated by insurance companies and undertakers.

John M. Daniel, Attorney General. T. C. Callison, J. Monroe Fulmer, Assistant Attorney Generals, Edgar A. Brown, David W. Robinson, Counsel for the Appellants.

September 25, 1948.

[fol. 258] Certificate of Service

I hereby certify that I have this day served the within Designation of Record to be Printed and Points on which

Appellants Reply by mailing a copy thereof, properly addressed to: Mr. C. Erskine Daniel, Cleveland Law Building, Spartanburg, S. C., one of the Attorneys for the Appellees in this cause.

David W. Robinson, of Counsel for the Appellants.

Subscribed and sworn to before me this 28th day of September, 1948. Alice Robinson, Notary Public for S. C. My Commission expires at the pleasure of the Governor.

[fol. 259] [File endorsement omitted.]

[fol. 260] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEES OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed October 9, 1948

Deeming additional parts of the record material and desiring them included in the printed record, the appellees, by their counsel, designate for printing the following:

1. Plaintiffs' supporting affidavits and affidavits in reply, as contained in pages one through thirty-five, inclusive in the printed booklet styled "Plaintiffs' Supporting Affidavits and Affidavits in Reply".

2. Photostatic Exhibit "A" to the affidavit of O. Charles Honig as printed on pages 7 to 18, inclusive, of the above mentioned booklet, said Exhibit being an advertisement of Wolfe-Todd & Morris Funeral Home as published in a Rock Hill newspaper.

3. Exhibit "B" to the said affidavit being a photostatic copy of a letter from A. M. Orgain, President of South Carolina Underwriters Association, dated February 9, 1948.

4. Exhibit "C" to the said affidavit of Honig (a photostatic copy of the news report published in Union Daily Times of Thursday, February 26, 1948, of the speech delivered by Mr. Orgain to the insurancemen connected with [fol. 260] various insurance companies operating in Union County.

5. Affidavit of O. Charles Honig dated May 17, 1948, sworn to before Mrs. Frances D. Staples, Notary Public,

(relating to claims paid by Family Security Life Insurance Company, and the undertakers who conducted the funerals).

6. The additional affidavit of J. Gordon Floyd which was attached to the plaintiffs' motion for continuing temporary restraining order.

7. The complete transcript of proceedings at the hearing on March 31, 1948, before the Banking and Insurance Committee of the South Carolina Senate on the bill later enacted (the Act assailed here by appellees).

8. This designation of additional portions of record to be printed.

Donald Russell, E. W. Johnson, C. Erskine Daniel, T. Sam Means, Jr., Attorneys for Appellees, All of Spartanburg, S. C.

October 8, 1948.

[fol. 262] PROOF OF SERVICE

Betty L. Hembree, duly sworn, says that she served the "Designation by Appellees of Additional Parts of Record to be Printed" in the above entitled cause on October 8, 1948, by depositing the same in the United States Post Office at Spartanburg, S. C., plainly addressed to David W. Robinson, Esquire, % Robinson & Robinson, Attorneys, 908 Palmetto Building, Columbia 23, S. C., with adequate postage pre-paid, he being the counsel for appellants who has drafted and served on C. Erskine Daniel, Esquire, of counsel for appellees, all notices, including praecipe, and "Appellants' Designation of Parts of Record to be Printed", all by mail with requested acceptance of service.

Betty L. Hembree.

Sworn to before me this 8th day of October, 1948.
Ruth Criek, Notary Public for S. C. (Seal.)

[fol. 263] [File endorsement omitted.]

[fol. 264] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 25, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 53,299. Eastern South Carolina, U. S. D. C. Term No. 297. John M. Daniel, as Attorney General of South Carolina, L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, Appellants, vs. Family Security Life Insurance Company, J. Gordon Floyd, W. Russell Floyd and William E. Lanford. Filed September 24, 1948. Term No. 297 O. T. 1948.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
SEP 24 1948
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY,

Appellants,

vs.

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

STATEMENT AS TO JURISDICTION

JOHN M. DANIEL,
Counsel for Appellants.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute involved	2
Date of judgment or decree sought to be reviewed and date upon which application for appeal is presented	3
Nature of the case and rulings of the Court below are such as to bring the case within the jurisdictional provisions on which the appellants rely	4
The questions presented is substantial	5
Statement respecting opinions	6
Appendix "A"—Opinion of the District Court	7
Appendix "B"—Findings of fact and conclusions of law	24
Appendix "C"—Order of District Court	43
Appendix "D"—Dissenting opinion of Dobie, J.	44

Table of Cases Cited.

Buder, In re, 271 U. S. 461	2
Clark v. *Poor*, 274 U. S. 554	2
Query v. *U. S.*, 316 U. S. 486.	2
Toomer v. *Witsell*, 92 L. Ed. 1131	2

Statutes Cited

Act of the South Carolina Legislature approved April 14, 1948 (South Carolina Acts of 1945, page —, 45 Stat. at Large, page —)	3
Constitution of the United States:	
Article I, Section 10	4
14th Amendment	2, 4
Judicial Code, Section 266 (28 U.S.C.A. 380, New 28 U.S.C.A. 1253, 2284)	2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD,

Plaintiffs,

vs.

HON. JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, HON. L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY,

Defendants

STATEMENT AS TO THE JURISDICTION OF THE UNITED STATES SUPREME COURT ON APPEAL TO REVIEW THE JUDGMENT IN THIS CAUSE.

The defendants-appellants presenting herewith their petition for appeal now file this statement as the basis upon which they contend that the Supreme Court of the United States has jurisdiction on direct appeal to review the final order, judgment or decree entered herein, and on which it is contended that the Court should exercise its jurisdiction.

(A) The Statutory Provisions Believed to Sustain Jurisdiction

This appeal is prosecuted from the final order, judgment or decree of a three-judge District Court granting a per-

manent injunction against the enforcement of a statute of the State of South Carolina, upon the ground that the State statute deprived the plaintiffs of equal protection and due process as guaranteed by the 14th Amendment of the Constitution of the United States.

Direct appeal to the Supreme Court is authorized by Section 266 of the Judicial Code (28 USCA 380, New 28 USCA 1253, 2284). The appellants contend that the Supreme Court of the United States has jurisdiction on direct appeal to review this final order, judgment or decree by virtue of the express statutory provisions cited above. In re: *Buder*, 271 U. S. 461; *Clark* v. *Poor*, 274 U. S. 554; *Query* v. *U. S.*, 316 U. S. 486; *Toomer* v. *Witsell*, —— U. S. ——, 92 L. Ed. 1131, 1134.

(B) The State Statute Which Is Involved

The South Carolina statute which was held in violation of the plaintiffs' rights under the 14th Amendment by the Court below (one Judge dissenting) reads as follows:

> An act making it unlawful for any life insurance company, its officers, agents or employees, to own, operate or maintain a funeral or undertaking business; or contract or agree with any funeral or undertaking establishment to conduct the funeral of any person insured by such insurance company; or for any funeral or undertaking establishment, its agents, officers or employees to be licensed as agents, salesmen or solicitors for any life insurance company doing business in this state.
>
> Be it enacted by the General Assembly of the State of South Carolina.
>
> Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, or to permit

its officers, agents, or employees to own, operate, or maintain any such funeral or undertaking business.

Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director, undertaker or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

Section 3. It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.

Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by fine not exceeding One Thousand ($1,000.) Dollars or by imprisonment at hard labor for not exceeding six months, or both, such fine and imprisonment within the discretion of the Courts.

Section 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Section 6. This Act shall take effect upon its approval by the Governor.

Approved the 14 day of April, 1948.

This statute will appear as South Carolina Acts of 1948, page —, 45 Stat. at Large, page —.

(c) **The Date of the Judgment or Decree Sought to Be Reviewed and the Date upon Which the Application for Appeal Is Presented.**

The final order, judgment or decree sought to be reviewed was entered of record on August 12, 1948. The petition for appeal is being presented and filed on August 27th, 1948.

(D) Nature of the Case and Rulings of the Court Below Are Such as to Bring the Case Within the Jurisdictional Provisions on Which the Appellants Rely.

The complaint charged that the State statute prohibiting life insurance companies from owning and operating mortuary or undertaking establishments and prohibiting funeral directors from becoming agents of life insurance companies was void because in contravention of the due process, privileges and immunities, and equal protection clauses of the 14th Amendment, and in violation of Section 10 of Art. I of the Constitution prohibiting a State from impairing the obligation of a contract.

The action was brought by an insurance company and by three individuals who are officers, directors, stockholders, policyholders and agents of the plaintiff insurance company as well as funeral directors, undertakers, officers and owners of mortuaries and undertaking establishments. The complaint alleged that the State statute violated the rights of these plaintiffs under the Constitution of the United States in the particulars referred to above.

The case was submitted to the three-Judge District Court for final judgment and decree upon the issues raised by the complaint, the defendants' motion to dismiss, the defendants' answer and the plaintiffs' motion to strike.

Two members of the three-Judge District Court held that this statute violated the plaintiffs rights under the equal protection and due process clauses of the 14th Amendment. The Court did not hold the legislation invalid under the privileges and immunities clause or under the contract clause. The dissenting opinion of Circuit Judge Dobie held that the State statute was a proper exercise of the legislative power of the State and not in violation of any Federal constitutional right of the plaintiffs.

The principal issue below was whether the South Carolina statute in forbidding the plaintiff insurance company, which is owned, managed, and directed by undertakers, from writing insurance with undertakers as agents and with premiums payable at undertaking parlors and benefits payable through undertakers deprives the plaintiff of due process, equal protection, their privileges and immunities or their rights under the contract clause of the Federal Constitution.

The second question presented was whether there was any equity in the Bill.

The question presented on appeal is whether the Court below erred in holding that the South Carolina statute forbidding the plaintiff insurance company which is owned, managed, and directed by undertakers from writing insurance policies through undertakers as agents, with premiums payable at undertaking parlors, and the benefits payable through undertakers, deprives the plaintiffs of the equal protection of the law or due process of the law as guaranteed by the 14th Amendment.

(E) The Question Presented Is Substantial

The question presented is substantial in that it includes the question of whether under our Federal system the State of South Carolina may regulate domestic insurance companies and domestic undertaking establishments, both of which are engaged in occupations affected with a public interest and subject to state regulation under the police power.

It involves the issue of whether a Federal District Court has the right to strike down a State statute as violative of the provisions of the 14th Amendment, because that Court differs with the State Legislature on the wisdom of the legislation.

It therefore involves the important and delicate relationship between Federal and State government and also the respective jurisdiction of Legislature and Court. These questions are of national importance, are substantial Federal questions and involve substantial sums of money.

Statement Respecting Opinions

The Court below (District Judges Wyche and Timmerman) delivered a written opinion, filed findings of fact and conclusions of law, and an order granting a permanent injunction against the enforcement of the State Statute. Circuit Judge Dobie filed a dissenting opinion. Copies of these findings, conclusions, opinions and the decree are attached to this jurisdictional statement.

Respectfully submitted,

(S.) JOHN M. DANIEL,
Attorney General.

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

C. A. 1918

I Concur: George Bell Timmerman, U. S. D. J., August 11th, 1948

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD and WILLIAM E. (William P.) LANFORD, *Plaintiffs*,

v.

HONORABLE JOHN M. DANIEL, as Attorney General of South Carolina; HONORABLE L. GEORGE BENJAMIN, as Insurance Commissioner of South Carolina, and B. B. BROCKMAN, as Sheriff of Spartanburg County, *Defendants*

Opinion

Filed Aug. 12, 1948. Ernest L. Allen, C. D. C. U. S. E. D. S. C.

Before Dobie, Circuit Judge; Wyche and Timmerman, District Judges

WYCHE, *District Judge:*

This is a suit to enjoin the enforcement of a South Carolina statute (Appendix A) which, among other things, declares it to be unlawful, punishable by fine and imprisonment in the discretion of the Court, (1) for any insurance company to own a mortuary or to permit its officers or employees to operate a mortuary, and (2) for any funeral director or employee of a mortuary to be licensed as an insurance agent, upon the ground that it is violative of the Federal Constitution.

With the filing of the action, plaintiffs applied for the convening of a statutory Court to hear and determine their

application for an interlocutory injunction, and pending such hearing, for a temporary restraining order. Section 266 of the Judicial Code, 28 USCA 380. On April 17, 1948, an order was entered, convening such statutory Court, and granting a ten day temporary restraining order, which has been continued by agreement of the parties.

The hearing before the statutory Court was based upon the pleadings, stipulations and various affidavits submitted by the parties. It was agreed by counsel for all the parties that, after ruling out all incompetent matter, the cause be submitted for a final decree upon the merits.

It is clear from the pleadings and the record that federal and equity jurisdiction exists, and that if the Act be unconstitutional, as claimed, plaintiffs are entitled to the relief prayed. *Dobie on Federal Procedure*, 166; *Liggett Co. v. Baldridge* (1928) 278 U. S. 105, 110; *Terrace v. Thompson* (1923) 263 U. S. 197, 215. The question in this case is whether the challenged act contravenes the due process and equal protection clauses of the Federal Constitution.

The facts giving rise to the controversy, briefly summarized, are as follows: For a number of years insurance companies, primarily those engaged in the issuance of what is commonly designated as "industrial insurance", have been selling in South Carolina a type of insurance policy which assures the payment of the assured's funeral upon his death. The record shows that in one instance at least (and the record does not indicate whether this case is instanced as an isolated example or as illustrative of a common practice) the agent of the insurance company selling this type of insurance, was an employee of a mortuary. So far as the record shows, no improper advantages of any kind were taken of the assured, either as a result of the issuance of this type of insurance, or of the fact that an agent selling it was connected with a mortuary.

In the early part of 1948, the plaintiff Family Security Life Insurance Company, a legal-reserve life insurance corporation, organized under the laws of South Carolina, embarked aggressively upon the business of writing this "pre-paid funeral" type of insurance. The active promoters of the company were J. Gordon Floyd and A. G. Mackey, both funeral directors, one located in Spartan-

burg and the other in Greenville, South Carolina. One of the reasons for Floyd's and Mackey's interest was their natural desire to see that as many persons as possible had assured the payment of their funeral through insurance. One of the heavy expense items in a mortuary, especially in the South, is the large volume of "charity funerals". By energetically pushing this type of insurance, Floyd and Mackey, both for themselves and for other morticians, would be protecting themselves, to a degree, against the loss attaching to "charity funerals".

The officers and employees of other mortuaries in the State were actively solicited as stockholders and agents of this insurance company. A large number associated themselves with the company as stockholders and/or agents. The company made rapid strides immediately. To a degree this resulted from the more liberal provisions incorporated in this plaintiff company's policies.

All policies offered by the company are on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner; and claims paid on the company's policies of insurance are made in cash, and permits the beneficiary freedom of choice in selection of a funeral home and in selection of type and cost of merchandise and services. Its contracts are more favorable to the insured than those of other competing companies writing the same class of insurance because of higher policyholders' reserves, more favorable premium rates, more liberal extended insurance and cash surrender values, and the adoption of the 1941 Standard Industrial Mortality Table. And it, alone, of all South Carolina companies, writes insurance up to age 74, and is the only industrial insurance company in South Carolina that has adopted the recommended provisions of the Guertin Reports. (Appendix B)

The plaintiff insurance company has 34 stockholders, all of whom, except one, either own, manage, supervise, operate or are employed by a mortuary, or undertaking establishment. It has 79 agents, all duly licensed by the Insurance Commissioner of South Carolina, 51 of whom are funeral directors, or owners, employees, or agents or officers of mortuaries, funeral directors, or undertaking estab-

lishments. No one funeral home may own more than forty-nine per cent of the company's outstanding stock. Its President and all but one of its five directors are either owners, managers, supervisors, or operators of mortuaries or undertaking establishments. It grants no exclusive agency in any community; anyone, including those in or entering into the undertaking business can become an agent and become a stockholder in the plaintiff company.

In 1947, before the plaintiff company became active, the insurance laws of South Carolina were drastically revised under an Act known as "The Insurance Law". 45 Stat. of S. C., pp. 322-473. These revisions were designed to, and did invest the Insurance Commissioner of South Carolina with the broadest and most extensive powers of supervision and control over insurance companies and insurance agents operating in South Carolina. Under "The Insurance Law", an insurance company can only be authorized to operate in South Carolina if the Insurance Commissioner approved its charter, and no agent can be licensed until the Commissioner has determined upon application and examination that the applicant is "a competent and trustworthy person" to act as such agent. This law clothes the Commissioner with authority to correct any form of "unfair competition" found by him to be employed by any insurance company. It also, makes it a criminal offense, punishable by fine and imprisonment in the discretion of the Court, "to make payment or settlement of death benefits * * * in merchandise or services rendered or agreed to be rendered". The Insurance Commissioner is empowered to revoke licenses of companies for proper cause or for violation of the laws of this State, to revoke the license of an agent when it appears that an agent has violated the law or *wilfully deceived or unjustly dealt with the citizens* of the State. In short, "The Insurance Law" gives the Commissioner plenary authority to deny or revoke licenses to any company or agent whose operations or activities might be deemed as a violation of law, unfair, unjust or deceptive.

Before the enactment of the challenged statute, and after an investigation of the proposed operations of the plaintiff company the Insurance Commissioner of the State, acting under "The Insurance Law" had duly authorized it to

engage in the writing of its type of "burial insurance" through funeral directors and employees of mortuaries, generally, as agents. Prior to this approval being given, the South Carolina Insurance Commissioner, it appears from the undisputed record, carefully inquired into plaintiff company's proposed method of operating and especially its intention to use normally funeral directors and employees of mortuaries as its agents. Such administrative officer, charged with special knowledge and familiarity in the field of insurance and clothed with such extensive powers, was not required to approve the operations of an insurance company if those operations transgressed the insurance laws of South Carolina, were unfair as against policyholders or competing companies, or might be subject to deception or improper advantage. By approving the plaintiff company's operations, the Insurance Commissioner had necessarily to conclude that those operations were proper. Similarly, the Insurance Commissioner duly licensed all the agents of plaintiff company, including the individual plaintiff Lanford, most of whom were employees of mortuaries. In so doing, the Commissioner found that such persons were both "competent" and "trustworthy" in every particular.

As the business of the plaintiff company increased rapidly its competitors became active. At meetings of agents of the competing insurance companies, pressure for legislation to destroy plaintiff company and to proscribe its agents was agreed upon. Division developed, too, among the morticians themselves and some of them joined with the competing insurance companies in promoting special legislation intended to destroy plaintiff company and its business. It seems obvious from the record that this legislation had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor. As a result of this pressure, the Legislature of South Carolina enacted, and the Governor approved on April 14, 1948, the challenged statute. (Appendix A)

Obviously, this statute foreclosed plaintiff Lanford from pursuing further his established insurance business, simply because he was also employed by a mortuary. It likewise made it impossible for plaintiff company to have funeral directors and employees of mortuaries licensed as its agents,

though this was its established method of operation, which had been approved by the Insurance Commissioner. Because the statute hit so patently at plaintiff company and its agents and limited their operations, the plaintiff company and the plaintiff Lanford, suing on behalf of himself and all others similarly situated, promptly filed in this Court their action to enjoin the enforcement of the statute.

The applicable principles of constitutional law are well settled. While the legislative power to regulate insurance is undisputed and although every presumption in favor of the legality of the legislation may be indulged, neither of these principles will justify any arbitrary legislative interference with the right of an individual to follow a lawful vocation such as an insurance agent. Any legislative restriction upon such right of a citizen must have some rational basis and must be reasonably designed to protect against some recognizable evil. To be specific, when the legislation questioned in this proceeding would deny to any employee of a mortuary the right to follow the lawful vocation of an insurance agent for no reason other than his employment by the mortuary, it is essential, if such legislation is to withstand the attack upon its constitutionality, to show that there is some connection between the legislative prohibition and an evil arising out of the employment of such employee as an insurance agent.

In *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, at page 513, the Court said: "* * * a State may not, under the guise of protecting the public, *arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon* them." (Emphasis added.)

In discussing the Fourteenth Amendment and its guaranties, the Court in *Meyer* v. *Nebraska*, 262 U. S. 390, at pages 399, 400, said: "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship

God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. * * *" The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. *Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts.*" (Emphasis added)

The statute in question would deny to any officer of an insurance company the right to own an interest in a mortuary and, more importantly, would make it a crime for an employee of a mortuary, whatever the character of his employment, whether part-time or full-time (whether as occasional driver or as general manager, to sell life insurance. This statute has no saving separability clause of constitutionality. In view of the modern form of legislative drafting, the omission of such a provision evidences clearly the legislative intent that this statute must stand or fall as a whole. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, at page 312. If either limitation imposed upon the right of freedom of contract is invalid, the entire statute must fall. Certainly, that portion which makes it illegal *per se* for an employee of a mortuary to write insurance too transgresses the constitutional restraint upon legislative action.

This legislation carries on its face no evidence of the evil sought thereby to be thwarted by the proscription of employees of undertakers as insurance agents. In their answer, their competent affidavits, or their arguments, the defendants have referred to no real facts justifying the proscription. Their argument is silent of any reasonable basis for this limitation upon the right of employment by a citizen. There is nothing to show that the interest of the public generally, as distinguished from other industrial insurance companies, requires such interference.

How can this Court, however much it may indulge its fancy, find any reasonable basis for this restriction upon the right of an individual citizen? The undisputed record in this case shows that prior to the enactment of this legisla-

tion one of the individual plaintiffs, an employee of a mortuary, had been duly licensed as an insurance agent by the Insurance Commissioner of South Carolina to write insurance for two other life insurance companies. It matters not under the assailed statute whether he merely drives an ambulance part-time or acts as a part-time usher, this statute declares his employment as an insurance agent as criminal. Yet, under "The Insurance Law" of South Carolina no one can be licensed as an insurance agent until the Insurance Commissioner has examined him, made due investigation and inquiry, and has satisfied himself that the agent is of sufficient moral character and sufficiently qualified to be authorized to act as an agent. By this same law the Insurance Commissioner is empowered, if any agent licensed by him should conduct himself improperly, violate the law, wilfully deceive, or unjustly deal with citizens of the State, to revoke the license theretofore issued. The plaintiff agent was issued a license by the Insurance Commissioner after such investigation and examination. This license was renewed only a few weeks prior to the enactment of this legislation. The Insurance Commissioner of the State has taken no steps to revoke his license. Nonetheless, in the absence of any showing that such agent is incompetent to act as an insurance agent and in the face of the positive finding by the Insurance Commissioner of the State that he is so qualified, the legislature has attempted by this challenged act to deprive him of the right to continue to act as an insurance agent in accordance with the authorization given to him by the Insurance Commissioner of South Carolina for the simple and only reason that he is employed also by a mortuary. Under such circumstances the conclusion, it appears to us, is inescapable that the legislative prohibition is an arbitrary exercise of the legislative power violative of the constitutional rights of the individual plaintiff.

Defendants' main contention in their arguments addresses itself to that portion of the assailed statute which denies to a mortuary and a funeral director the right to be licensed as an insurance agent, but it is equally clear to us that the reasoning employed to support this legislative prohibition is similarly untenable. In their arguments they attempted to give some coloring of reason to this arbitrary legislation.

Thus they have suggested that if an undertaker or funeral director or mortuary is licensed as an agent for an insurance company and actively aids in the development of its business, there will be some temptation to charge for the funeral the full amount of the insurance, even where the insured is a person of very scant means. Such argument overlooks the fact that this insurance is procured for the purpose of assuring an adequate funeral for the assured. The assured has himself fixed the amount of that insurance and has thereby determined the amount which he wishes invested in his funeral. Since the assured took out the insurance and paid the premiums, his wish that the full amount of insurance should be used for his funeral represents, it would seem, a trust which his family would conscientiously carry out.

It is also asserted by the defendants that this portion of the challenged statute is intended to circumvent any subtle evasion of the existing statutory law prohibiting the payment of life insurance policies in merchandise or services. The policy and the by-laws of the plaintiff company provide that it shall be payable in cash. That is an enforceable right. The "Insurance Law" requires the amount of the policy to be paid in cash. We cannot assume that the plaintiff company and its agents will violate the criminal law. No one has suggested that there has been the slightest attempt at evasion of this provision of the contract. The theory upon which this argument is predicated is that the "facility of payment" clause would justify the insurer in paying the proceeds of the policy to the undertaker conducting the funeral. The language of the clause does not support this conclusion. But it is true that the proceeds of the insurance will likely be used to pay for a funeral. This is the purpose of the insurance. The assured was seeking thereby to guarantee the payment of his funeral. If the beneficiary of the policy does not provide a funeral for the assured with the proceeds of the insurance, he will, as we have already pointed out, be violating at least a moral duty to the deceased.

Furthermore, during the legislative hearings, preceding the enactment of the statute in question, it was freely conceded by the proponents of the legislation that they knew

of no instance when any advantage of any kind had been taken of any assured, or of any complaint as a result of the operations of the plaintiff company, of the issuance of its type of insurance, or of the fact that morticians or their employees acted as agents for an insurance company.

Moreover, if the plaintiff company's method of operating was of a character to facilitate the evasion of existing insurance laws, such as that prohibiting settlement of the policy in merchandise and services (a conclusion that has no plausibility in the face of the admitted fact that the plaintiff Floyd was one of the active promoters of this provision, and was instrumental in obtaining its incorporation in the "Insurance Law"), the Insurance Commissioner was authorized under existing law to deny the plaintiff company the right to operate and to deny to its agents licenses. His failure so to do is cogent proof that this argument of the defendants is without any merit.

It is also stated that Mr. Floyd in his campaign to secure undertakers as agents for his company stated that this insurance would be a means of confining the undertaking business in South Carolina to the undertakers who are Floyd's agents and that it would be a means of discouraging new competitors, especially veterans, from embarking upon this business. The undisputed facts in this case refute this suggestion. The plaintiff insurance company grants no exclusive agency in any community. Anyone entering the undertaking business can become an agent and become a stockholder in the plaintiff company. This applies to veterans and everyone else alike. This insurance cannot, therefore, be used as a device for maintaining the business status quo or closing the door to any new competitor all of whom have equal rights with their older competitors to utilize this service. Further, it must be remembered that the plaintiff company has no copyright on this type of insurance. Already, many other insurance companies write it. For many years many of the smaller life insurance companies have been engaged in writing this type of insurance almost exclusively, and many of the larger companies have an "Industrial Department" for writing this type of insurance. If an undertaker does not wish to represent the

plaintiff company, there are many competitors of the plaintiff company whom he can represent.

It is said that the undertaker insurance agent received a modest commission of only 15% and that this remuneration is so small that the agent will be tempted to secure his remuneration elsewhere. Why 15% is not adequate compensation the defendants do not show. Certainly if the agent secures a sufficient volume of business this rate of commission should provide an adequate return. In any event, it seems impossible to support a statute of such an arbitrary nature as the challenged act on this novel ground.

Actually, it seems obvious from the record that this legislation had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor. This language of the Court in *People* v. *Gillson*, 109 N. Y. 389; 17 N. E. 343, at pages 345, 346, seems apt: "Liberty, in its broad sense, as understood in this country, means the right, not only of freedom of servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. These principles are contained and stated in the above language in various cases * * * (citing cases). It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. *It is evidently of that kind which has been so frequent of late, — a kind which is meant to protect some class in the community against the fair, free and full competition of some other class; the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably to them, or unfavorably to their competitors, in the commercial, agricultural, manufacturing or producing fields.*" (Emphasis added)

The reasoning of the Supreme Court in *Liggett Co.* v. *Baldridge*, *supra*, seems conclusive against the validity of the instant statute. In the cited case, a Pennsylvania Statute required every drug store to be owned by a licensed pharmacist, and forbade any corporation, association or

partnership to own a drug store unless all the partners or members were licensed pharmacists. In striking down such legislation as unconstitutional the Court said: "A state undoubtedly may regulate the prescription, compounding of prescriptions, purchase and sale of medicines, by appropriate legislation to the extent reasonably necessary to protect the public health. And this the Pennsylvania legislature sought to do by various statutory provisions in force long before the enactment of the statute under review." After reciting the regulatory legislation of Pennsylvania protecting the public health in relation to the compounding and sale of prescriptions and medicines the Court concluded: "Thus, it would seem, every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding, or selling drugs and medicines is amply safeguarded." Likewise, it may be said with equal force, in applying the same reasoning, here, that a state undoubtedly may regulate the insurance business and the licensing of insurance companies and insurance agents, and the revocation of such licenses, and this, South Carolina sought to do, by the enactment of "The Insurance Law", before the enactment of the statute under consideration. Thus, it would seem, every point at which defendants contend that the public health, safety, morals of general welfare is likely to be injuriously affected by the licensing of funeral directors or employees of mortuaries as insurance agents is amply safeguarded by "The Insurance Law". In holding the statute invalid in the *Liggett Case*, the Supreme Court concluded: "The act under review * * * deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'"

In fact, the defendants assume that the *Liggett Case*, if followed by this Court, would require the granting of plaintiffs' prayer. However, they point to Mr. Justice Holmes' dissent and assert that we should conclude that the present complexion of the Supreme Court will follow the dissent-

ing opinion of Mr. Justice Holmes rather than the majority opinion of the Court. We cannot agree to the view that lower courts may review the decisions of the Supreme Court, and, following the predilection for individual ... tices, subvert the salutary doctrine of *stare decisis* into a study of personalities rather than a becoming observance of the accepted majority decisions of the Supreme Court. We are firmly of the opinion that if the decisions of the Supreme Court are to be reversed, that function should be reserved to the Supreme Court itself. Any other rule would bog down the judicial processes hopelessly in those quagmires of uncertainty which would justly lay the District Courts open to the gravest public censure. It is not our duty to speculate on what the Supreme Court as now constituted may do on an appeal in this case. It is our duty to decide the case as we think it ought to be decided on the decisions as they now stand.

Hauser v. *North British & Mercantile Ins. Co.*, 206 N. Y. 455, 100 N. E. 52, 42, LRA (N. S.), 1130, is also in point and its reasoning is aptly applicable to the case we have for decision. In that case the Court said: "As it was intimated below, following the suggestion in People *v.* Ringe, 197 N. Y. 143, 90 N. E. 451, 27 L. R. A. (N. S.) 528, 18 Ann. Cas. 474, the legislation, now in question, must have been promoted in the interests of those engaged in the insurance brokerage business, alone, or in connection with a real estate brokerage business, rather than with any view of the public welfare. And see People *v.* Gillson, 109 N. Y. 389, at page 399, 17 N. E. 343, 4 Am. St. Rep. 465. Why should those who wish to engage in the business of soliciting and placing insurance not be permitted to conduct it as incidental to, or in connection with, any other innocent occupation, except that of real estate brokers? Where the Legislature may prohibit a business, or an occupation, it may prescribe conditions upon which it may be conducted; but, if the business, or occupation, be useful to the citizen, and it be lawful, the Constitution both of the state and of the nation, guarantees to him the right to pursue it freely, and any arbitrary restriction upon its pursuit should be condemned as an invasion of the guaranty. In varying language, but with the same thought, in very many cases, this court has pointed

out that the constitutionality of an act is to be tested by its effect upon the citizen's right freely to pursue lawful occupations; that a statute under the guise of an exercise of the police power cannot arbitrarily interfere with that liberty of pursuit; that the equal protection of the laws mean equality of opportunity to all in like circumstances; and that classification to be valid must not be arbitrary and discriminate against persons without a basis in reason. These principles have become familiar from frequent statement in the decisions and need no citation, nor discussion, of the cases here. They have become constituent elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the law permits.

"The statute before us goes far beyond what is proper regulation and is prohibitory, in preventing a person from pursuing the occupation of an insurance broker, except as his principal business, or as an adjunct to a real estate business. To use the language in the case of *Wynehamer* v. *People*, 13 N. Y. at page 399, this statute 'passes the utmost limit of regulation, and does not even wear a disguise.' The restriction is not in the public interests; it is obviously in the interests of the class, either of insurance, or of real estate brokers. The insurance underwriters are not forbidden to transact their business through brokers; they are required to limit it to the class of brokers authorized by the statute. The plaintiff is a lawyer, and presumably the nature of that occupation should well qualify him to make insurance contracts, and there are many mercantile occupations, which certainly cannot be deemed to affect the person's fitness to solicit, or to place, insurance. But this statute would prevent them from adding to their earnings by pursuing that occupation. To concede the validity of this statute would be to concede a power to the Legislature in the guise of a regulation to destroy a lawful business. This plaintiff has built up a brokerage business, in connection with his other occupation—as many, presumably, others have done holding, similarly, fire exchange brokers' certificates. But, under this statute, he is compelled to refrain from it, unless pursued under conditions which involve the

sacrifice of that other occupation. Arbitrarily, the statute interferes with a citizen's business pursuits and, by an unreasonable discrimination, deprives him of that equal opportunity, which the Constitution guarantees to him. What is there in the calling of an insurance agent, or broker, which demands any special training, or knowledge, not readily to be acquired by any business man? That he should be qualified by antecedents and in character for engaging in an occupation calling for some degree of trustworthiness may be true; as it is, also, true that the nature of this occupation, differing from other mercantile pursuits, calls for an acquaintance with certain rules by which it is governed. But trustworthiness is the common property of men, and success in placing insurance will depend upon the industry, honesty, and competence, which the broker displays."

The challenged statute affects no other insurance company than the plaintiff insurance company, nor the agents of any insurance company other than the agents of the plaintiff company. As heretofore pointed out, it would deny to any insurance company, and an officer of an insurance company, the right to own an interest in, or operate a mortuary, and would deny to an undertaker, or an employee of an undertaker, the right to be licensed as an insurance agent. One of counsel for defendants frankly admitted in open court that he knew of no insurance company, or of any officer or agent of any insurance company, who desired to go into the undertaking business.

The challenged statute forecloses plaintiff Lanford from pursuing further his established insurance business, simply because he is also employed by a mortuary; it likewise makes it impossible for plaintiff insurance company to have undertakers and employees of mortuaries licensed as its agents, though this was its established method of operation; it is arbitrary and discriminative and designed to destroy, and will destroy, the plaintiff insurance company and its business, and deprive it and its agents of the right to do business in a lawful manner, and pursue a necessary, useful, and lawful gainful calling, with no discernible public evil to be corrected, or public benefit to be achieved; and for these reasons it violates the due process and equal protection clauses of the United States Constitution.

For the reasons herein stated it is our opinion that the injunctive relief prayed for should be granted. A judgment to this effect will be filed herewith.

Appendix A

AN ACT making it unlawful for any life insurance company, its officers, agents or employees, to own, operate or maintain a funeral or undertaking business; or contract or agree with any funeral or undertaking establishment to conduct the funeral of any person insured by such insurance company; or for any funeral or undertaking establishment, its agents, officers or employees to be licensed as agents, salesmen or solicitors for any life insurance company doing business in this state.

Be it enacted by the General Assembly of the State of South Carolina.

Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, or to permit its officers, agents, or employees to own, operate, or maintain any such funeral or undertaking business.

Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

Section 3. It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.

Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon con-

viction shall be punished by fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard labor for not exceeding six (6) months, or both, such fine and imprisonment within the discretion of the courts.

Section 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Section 6. This Act shall take effect upon its approval by the Governor.

Approved the 14 day of April, 1948.

Appendix B

In 1937 the President of the National Association of Insurance Commissioners appointed a committee composed of the actuaries of the Insurance Departments of five different States with one representative each from the Actuarial Society of America, and the American Institute of Actuaries, to study and report upon the need for a new mortality table, because of "the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality' ", as he phrased it. The report, outlining the scope of its investigations in detail, and presenting the committee's conclusions and recommendations, supported by elaborate and detailed scientific analyses, graphs, charts, statistical tables, comparisons of methods of valuation, and a digest of the statutory provisions of various states was adopted by the Association at its meeting at Biloxi, Mississippi, December 8, 1939. The report recommended legislation which it "deemed in the public interest, because of its encouragement to strengthening of reserve bases in accordance with modern tables of mortality, lower rates of interest, and more conservative methods of calculation". In June, 1941, the report specifically recommended legislation revising the artificial relationship between mortality and interest standards, liberalized cash surrender values, and extended insurance provisions, and the adoption of the "1941 Standard Industrial Mortality Table" and discarding the "American Experience Mortality Table", widely in use, especially in the South, and used by all insurance companies writing industrial life insurance in South Carolina *except the plaintiff insurance company*, unrevised since

1870, and necessarily failing to reflect the immense gains in life expectancy brought about by the many discoveries and scientific advances in the medical and surgical realm, as well as the discovery and development of the so-called "magic drugs", and the new methods of treatment, and the quicker hospital and medical relief made possible by the immense improvements in transportation. These reports are known in the terminology of insurance men as "The Guertin Reports".

A True Copy: Attest.

ERNEST L. ALLEN,
[SEAL.] *Clerk, United States District Court for the Eastern District of South Carolina.*

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

Filed Aug. 12, 1948. Ernest L. Allen, C. D. C. U. S. E. D. S. C.

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD and WILLIAM E. (William P.) LANFORD, *Plaintiffs*,

v.

HONORABLE JOHN M. DANIEL, as Attorney General of South Carolina, Honorable L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, *Defendants*

Findings of Fact and Conclusions of Law

C. A. 1918

In compliance with Rule 52(a) of the Rules of Civil Procedure, the Court finds the facts specially, and states its conclusions of law thereon, as follows:

Findings of Fact

1. The plaintiff Family Security Life Insurance Company is a legal reserve life insurance company, created under the laws of South Carolina, and licensed by its Insurance Department to engage in the life insurance business, and has its Home Office at Spartanburg, South Carolina. It has complied with all valid statutory and regulatory provisions promulgated for the governance of life insurance companies in South Carolina. The Plaintiff company issues two types of policies, (1) a whole life policy, and (2) a twenty-payment life policy. Its maximum policy is of the face value of $750.00, and its minimum, $125.00. Its President and two other of its directors are "ex-G.I.s", as the honorably discharged veterans of World War II are popularly called.

2. Its authorized capital is $50,000.00; its subscribed capital is $25,000.00; its paid-in capital is $16,000.00, and it has a paid-in surplus of $64,000.00, making the aggregate capital account $80,000.00.

3. It has 34 stockholders, all except one being directly or indirectly connected with a mortuary or undertaking establishment as stockholder, owner, manager, or employee. The respective mortuary establishments with which they are affiliated are located in seventeen different counties of the State; it grants no exclusive agency in any community; anyone in the undertaking business may become an agent or stockholder.

4. It has 79 agents, 51 of whom are directly or indirectly connected with a mortuary or undertaking establishment. All were relicensed by the Insurance Commissioner in March, 1948, for the period beginning April 1, 1948, and ending March 31, 1949, after examination required by the insurance laws of South Carolina, hereinafter referred to.

5. The plaintiff J. Gordon Floyd is a stockholder and director and agent of the plaintiff insurance company, as well as its president, and original promoter. He has $13,000.00 invested in the capital and surplus, and owns

one-half the capital stock of J. F. Floyd Mortuary, Inc., and is its president and manager.

6. The plaintiff W. Russell Floyd is a stockholder and director in the plaintiff insurance company, and owns one-half the capital stock of the J. F. Floyd Mortuary, Inc., and is one of its directors. His investment in the plaintiff insurance company is $13,000.00.

7. The undertaking business now conducted by the J. F. Floyd Mortuary, Inc. has been continuously conducted in Spartanburg, South Carolina, by the Floyd family for sixty-two years. The mortuary has an investment of $23,000.00 in the capital and surplus of the plaintiff insurance company.

8. The plaintiff William E. (William P.) Lanford is a stockholder, director and agent of the plaintiff insurance company, is an owning partner of the Lanford-Boyter Mortuary in Woodruff, South Carolina, and is employed as its manager. While so employed by the Lanford-Boyter Mortuary as its manager, he was licensed by the South Carolina Insurance Commissioner as an agent for the Equitable Life Assurance Society of the United States in April, 1947; and is licensed as an agent to write health and accident insurance with hospitalization and death benefits in accidental cases for the North American Assurance Society of Virginia, Inc. There is no evidence that any improper advantage of any kind was taken of any assured, either as the result of the issuance of this type of insurance, or the fact that the agent selling it was an employee of a mortuary.

9. The defendant John M. Daniel is Attorney General of South Carolina, with the authority and duty to direct and control legal proceedings on behalf of the State.

10. The defendant L. George Benjamin is Insurance Commissioner of South Carolina, and the head of its insurance department. He has the duty and authority to enforce all laws rela ng to insurance, with broad powers of supervision and regulation of the companies, their agents, their policy contracts, their reserves, and methods of business, as more fully stated hereinafter.

11. The defendant B. B. Brockman, is the Sheriff of Spartanburg County, South Carolina, and its chief law enforcement officer.

12. This action arises under Section 1 of Article XIV of the Constitution of the United States.

13. The amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00. The investments of the personal plaintiffs in the plaintiff insurance company are in jeopardy, as well as their right to do business and pursue a lawful, useful and necessary gainful occupation. The corporate plaintiff's good will, working organization, and character as an exceptionally successful going concern are involved. Plaintiffs have no adequate remedy at law.

14. Since 1929, (36 S. C. Stat., 234; Section 7984 S. C. Code of 1942; Section 65, Article 1, of the Act adopted May 12, 1947, known as "The Insurance Law," 45 S. C. Stat., 350) it has been unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rendered. It is stipulated in writing that the plaintiff J. Gordon Floyd was instrumental in obtaining in its present form the incorporation of this provision in the insurance law of South Carolina, adopted in 1947. (45 S. C. Stat. p. 350, sec. 65).

15. In 1937 the President of the National Association of Insurance Commissioners appointed a committee composed of the actuaries of the Insurance Departments of five different States with one representative each from the Actuarial Society of America, and the American Institute of Actuaries, to study and report upon the need for a new mortality table, because of "the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality' ", as he phrased it. The report, outlining the scope of its investigations in detail, and presenting the committee's conclusions and recommendations, supported by elaborate and detailed scientific analyses, graphs, charts, statistical tables, comparisons of methods of valua-

tion, and a digest of the statutory provisions of various states was adopted by the Association at its meeting at Biloxi, Mississippi, December 8, 1939. The report recommended legislation which it "deemed in the public interest, because of its encouragement to strengthening of reserve bases in accordance with modern tables of mortality, lower rates of interest, and more conservative methods of calculation." In June, 1941, the report specifically recommended legislation revising the artificial relationship between mortality and interest standards, liberalized cash surrender values, and extended insurance provisions, and the adoption of the "1941 Standard Industrial Mortality Table" and discarding the "American Experience Mortality Table," widely in use, especially in the South, and used by all insurance companies writing industrial life insurance in South Carolina *except the plaintiff insurance company*, unrevised since 1870, and necessarily failing to reflect the immense gains in life expectancy brought about by the many discoveries and scientific advances in the medical and surgical realm, as well as the discovery and development of the so-called "magic drugs," and the new methods of treatment, and the quicker hospital and medical relief made possible by the immense improvements in transportation. These reports are known in the terminology of insurance men as "The Guertin Reports."

16. In about 1941, the plaintiff J. Gordon Floyd, who had been a funeral director in Spartanburg, South Carolina, for many years, knowing that one of the heavy expense items in a mortuary, especially in the South, is the large volume of "charity funerals", and stimulated by the many and constant inquiries from his clientele as to how they might arrange and pay for their funeral and burial expenses while they were living and earning, and because many of them wished to make deposits to be held in trust by the mortuary to bury them when they died, and knowing the great anxiety among the wage-earning and lower income groups to be assured that their funeral and burial expenses would be provided for and not be a burden on the surviving family, which anxiety was accentuated during the days of the depression in the 30s, began to investigate the feasi-

bility of writing legal reserve life insurance through funeral directors and mortuaries. Convinced of the soundness of this method of writing insurance, and of its benefits and advantages to the policy holders, he and Arthur Mackey, funeral director of Greenville, acquired the Pee Dee Life Insurance Company, changed its name (by statutory amendment) to Family Security Life Insurance Company, and was ready to inaugurate the plan, when at the commencement of World War II, he entered the armed service and continued in the army for four years. Though the company was licensed annually since 1941, it remained inactive until his discharge, when he resumed his active interest in the plan. He employed O. Charles Honig to study the operations of the plan in states where such companies had been doing business. Mr. Honig spent more than eight months in his investigation, discussing the plan with insurance executives and funeral directors, studying the actual operations of companies which had put the plan in effect, particularly, the experience of the Family Fund Life Insurance Company of Georgia, which, in seven years of operation, had acquired 200,000 policyholders and had in force $50,000,000.00 of insurance. Its maximum policies are in the sum of $500.00 and the minimum, $100.00. He reported a wide-spread public approval and acceptance of the plan and that companies operating on the identical plan of the Family Security Life Insurance Company were doing business in North Carolina, Texas, California and Washington; and that he found a wide-spread public demand for insurance written by this method and on this plan, giving these reasons:

A. The people feel their local funeral director is more permanent in their community than is the average industrial insurance agent, who collects his weekly "debit" and who is constantly being replaced by another agent unfamiliar to the policyholders. Evidence of this public demand is found in the alarmingly high lapse ratios common to weekly industrial life insurance. (During 1946 South Carolina industrial life insurance companies issued $201,000,000.00 in new insurance and lapsed $126,000,000.00)

B. Funeral homes are normally among the oldest established businesses of a community. It becomes a family tradition to use a certain funeral director, just as one uses the family doctor or joins the Church of his parents or grandparents. This feeling towards the funeral director arises largely because he has fulfilled the confidence placed in him. Since life insurance is an auxiliary service to his principal business they feel that his insurance policies must be reliable.

C. The people regard it logical to carry their insurance against the risk of unexpected burial expenses with the funeral director—or hospital insurance with their hospital or doctor.

D. Funeral directors . . . are frequently approached by people who desire to pre-arrange their funeral service, and pay for it in advance. Since the funeral director has not the facilities or knowledge to handle investments, these people would have to pay the full amount of their pre-arranged service. Through the mechanics of life insurance cost of such prearrangements can be materially reduced because of guaranteed interest rates, and actuarial expectancy.

E. People of substantial means with large amounts of insurance are interested in a small-amount policy through their funeral director to prevent their survivors from overspending on their funeral arrangements and service.

17. Mr. Honig became Vice-President of the plaintiff insurance company, he and Mr. Floyd arranged the set-up as disclosed by the company's by-laws set out below, and then proceeded to call on nearly all the funeral directors and undertakers in South Carolina, offering to each and all of them the right to become stockholders in and agents for the company, at the same per share price ($1.00 par, plus $4.00 surplus) Mr. Floyd had paid, notwithstanding the work that had been done and the expense incurred in building up the business to where its prospective earnings were attractive. One share of stock entitled any funeral director or undertaker to become an agent. A part of their sales argument was Article 1 of the Company's by-laws, to which

the prospective purchasers were asked to direct their attention. The following five sections comprise Article 1 of the by-laws:

"Section 1. Objectives. The objectives of the company are those of providing the people of South Carolina with a sound, economical, attractive plan and method for prepaying funeral expenses, through the mechanics of life insurance, and providing a permanent protection against the operation of burial rackets in the State of South Carolina.

"Section 2. Method of Operation. The company shall offer its insurance through South Carolina Funeral Homes and Funeral Directors who own stock in the company and serve as its exclusive agencies and principal agents, respectively.

"Section 3. Payments in Cash. All policies offered by the Company shall be on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner, and claims paid on the company's policies of insurance shall be made in cash and shall permit the payee complete freedom of choice in selection of funeral home and in selection of type and cost of merchandise and services.

"Section 4. Restriction on Activities. The company at no time will enter the funeral business, nor will it, at any time, or under any circumstances, own or lend money on stock, real estate, equipment, paraphernalia, rolling stock, merchandise or any other assets owned or used by any funeral home in the conduct of its funeral business.

"Section 5. Restriction on Stock Ownership. No one funeral home may own more than forty-nine per cent of the company's outstanding stock."

18. As hereinbefore stated, 32 funeral directors or undertakers, in addition to the J. F. Floyd Mortuary, Inc., became stockholders, and they and some of their employees, 51 in all, after examination required by the insurance law of South Carolina, hereinafter summarized, became duly licensed agents.

19. The individual plaintiff William E. (William P.) Lanford was amongst those thus licensed as an agent of the plaintiff insurance company.

20. Mr. Wallace, an actuary for Palmetto State Life Insurance Company and others, as well as for the Family Fund Life Insurance Company of Georgia, and the plaintiff company, and also Mr. Dana, Chief Actuary of the Insurance Department of South Carolina have pronounced the policy contracts of the plaintiff company sound as to reserve basis, mortality table, non-forfeiture values, interest rate assumed, premiums charged, and cash surrender values, and in all other respects.

21. The plaintiff company, alone, among all the companies writing industrial life insurance in South Carolina, has adopted these recommendations from the "Guertin Reports":

(a) The 1941 Standard Industrial Mortality Table, which is the most recent mortality table available, and reflects improvements in mortality as brought about by improvements in medical science, living conditions, etc.

(b) The Commissioners' valuation method for determining policyholders' reserves and non-forfeiture values, the general effect of which method is to establish higher policyholders' reserves than the former methods used by industrial life insurance companies in South Carolina.

(c) An assumed interest rate within the earning capacity of the company based on current market and investment conditions.

These are in the interest of the policyholder.

22. The premium rates of the plaintiff company are more favorable to policyholders than the rates of other industrial life insurance companies. The cash surrender and extended insurance values are greater than those of other industrial life insurance companies in this State, and it alone writes policies up to age 74; no other company writes policies above age 65.

23. After full disclosure to the Insurance Commissioner of the plan and method to employ funeral directors as agents of the plaintiff insurance company, and after full discussion with him by Mr. Floyd and Mr. Honig, he said he saw "no objection to its method of employing funeral directors as its agents", and, as stated hereinbefore, in late March, 1948, relicensed the plaintiff company for the period from April 1, 1948 to March 31, 1949, as well as all of its agents, including the 51 who were connected with mortuaries or undertaking establishments.

24. While the plaintiff company has agents not connected with mortuaries or undertaking establishments, it is the only life insurance company operating in South Carolina emphasizing selling insurance through owners, operators, and employees of such establishments; and the only one whose officers and many of whose agents operate and maintain such establishments.

25. The General Assembly of South Carolina, after a study of the subject commencing in or before 1945, revised the insurance laws by an Act adopted May 12, 1947, to be known as "The Insurance Law", sub-headed in thirteen articles dealing comprehensively and in detail with every type of insurance, insurance company, fraternal benefit associations, the policy contracts, methods of business, reserves, agencies, and agents,—in fact, with every phase of insurance, including (Articles 12 and 13) the prevention and unfair methods of competition, and unfair and deceptive acts and practices in the business of insurance, whether defined or undefined by the Act. (Act #322 of the S. C. General Assembly of 1947; 45 S. C. Stat. 322-472).

26. Among the pertinent provisions of this Act are: The establishment of the Insurance Department charged with the enforcement and execution of laws relating to insurance; an Insurance Commissioner as Chief Officer, with deputies, a Chief Actuary and other Actuaries, and a full staff of Examiners, Clerks, and other employees; requiring the Commissioner to see that all laws governing insurance or relating to the insurance business are executed, giving him power to that end to make rules and regulations, and

to modify, amend or withdraw them; to require reports from insurance companies on blank forms to be devised and furnished by him, to secure full information as to the standing companies; to institute and prosecute violations of the Act; forbidding that the Secretary of State shall issue a Charter to any insurance company or permit a foreign insurance company to do business without the written approval of the Commissioner; authorizing the Commissioner to grant approval or permits or to make any order affecting any insurer, agent or broker within the limits of the broad discretion the Act confers on him; empowering the Commissioner to investigate charges and to hold hearings, and decide the matter at issue (subject to review by the Court), to subpoena witnesses, enter premises, administer oaths, to punish for contempt; "every insurance company doing business in this State shall be licensed and supervised by the Commissioner"; he may examine companies, and in addition to the annual reports required by law, may require special reports; must, before licensing any insurance company, require an oath of compliance from its president; must, before licensing a company, determine that its reserves are adequate to protect the policyholders, and as to a domestic company "determine that the reserve basis to be used . . . . will be adequate" to that end; impose the penalties prescribed by the Act for violations, when he determines, after hearing, that there has been a violation; assess the costs against the offending company, and revoke its license on failure to pay; prevent discriminations, rebates, or favoring inducements as between insureds of the same class and risk; must approve policy contracts, reserves, methods of business, and may revoke the license on determining from investigation that the company is in unsound condition, or has failed to comply with the law, or if, in case of life insurance companies, its assets are less than liabilities exclusive of capital, or if its officers or agents refuse to perform any legal obligation with reference to the investigation, revoke also the licenses of its agents; and he may revoke the license of any company failing to pay a judgment.

27. Section 107 of Article 1 of the Act (45 S. C. Stat. 364) deals with licensing insurance agents. It provides

that each shall stand an examination as prescribed by the Commissioner, and, on oath, on forms furnished by the Commissioner, in addition to name, age and residence, furnish information as to his qualifications for a license, his knowledge of the State Insurance Laws, what experience in insurance he has had, whether he has ever been in default in any indebtedness to any insurance company, or ever had an agent's contract cancelled, and whether he has ever had a license suspended, revoked, or refused by any State, and submit a complete history of his employment for three years before the date of his application. Any license granted expires March 31 of each year.

28. The second paragraph of Section 107 provides that "before issuing such license, the Commissioner shall determine, from the examination, that the applicant . . . . is a competent and trustworthy person to engage in the classification of insurance business he intends to engage in"; and empowers the Commissioner to revoke any license after ten days' notice or to refuse a reissue when it appears that an agent has violated the law, or willfully deceived or dealt unjustly with the people of this State. Article 12 of the Act (45 S. C. Stat. 463) regulates trade-practices in the insurance business, defines unfair methods of competition, or deceptive acts or practices as: (1) misrepresentation and false advertising of policy contracts, making, issuing or circulating any estimate, illustration, circular or statement misrepresenting policy terms, or the advantages promised, or as to financial condition, legal reserve, or using a name misrepresenting the true nature of the policies, or inducing a policyholder in another company, by misrepresentation, to lapse or forfeit his insurance; (2) making or publishing orally, by radio, newspaper, circular, pamphlet, letter, or poster, or in any other way any statement with respect to the insurance business, or any person in the conduct of his insurance business, which is untrue, deceptive or misleading; (3) making a false statement or one that is maliciously critical of the financial condition of an insurer; (4) boycotting, coercion, or intimidation tending to result in restraint of or monopoly in the insurance business; (5) filing or publishing a false statement of financial

condition, or making false entries in records or reports; (6) issuing, or permitting agents, officers or employees to deliver agency company stock, or capital stock, or contracts promising profits, as an inducement to insurance; (7) unfairly discriminating between individuals of the same class, and equal life expectancy in any life insurance contract; (8) giving rebates or special favors to induce insurance.

29. Sections 5 through 8 of Article 12 confer upon the Commissioner the power to examine and investigate into the affairs of every person engaged in the insurance business, to determine whether he has been or is engaged in any unfair method of competition, or any unfair or deceptive practice, and provides a plenary, prompt and adequate procedure for the holding of hearings, the attendance of witnesses, the production of records, and for the issuance of "Cease and Desist" orders by the Commissioner where he finds the existence of any such. Section 9 of Article 12 prescribes the procedure to be followed by the Commissioner as to unfair methods of competition and unfair or deceptive practices not defined in Section 4. Section 11 of Article 12 punishes the violation of a "Cease and Desist" order of the Commissioner by a fine of $50.00, except, if the violation be found wilful, the penalty may be $500.00.

30. "Industrial Insurance", as embedded in the nomenclature of life insurance, signifies a policy of $1,000.00 or less with premiums payable weekly, semi-monthly, or monthly, and the words are written on most policies of that type merely as descriptive. Industrial policies are written on the lives of wage-earners and their families, the so-called industrial population. Premiums are most often collected by agents calling at the homes of the policyholders. (Chapter VIII, page 95 of the Guertin Reports on "The need for a new mortality table").

31. Many of the smaller life insurance companies concentrate upon this type of insurance, and many of the largest life insurance companies have an "Industrial Department", with local offices and local superintendents in industrial communities where a large number of agents have "Debits",

routes where the local agent calls at the homes or places of business of the holders of policies he has written to collect premiums.

32. The plaintiff insurance company provides for the payment of premiums monthly, and they may be brought in person by the insureds, or mailed to, the agency office of the mortuary through whose owner or employee the policy was written. All insurance companies use an envelope or "jacket" in which their policies are placed, which carry identifying information readable at a glance. The plaintiff company uses a "jacket" which carries the name of the representative who sold the insurance, the name "Family Security Life Insurance Company", and the words "Policy of Guaranteed Protection for Pre-payment of Funeral Expenses", the name of the insured, the address, the amount of the monthly payments, and that they are payable on the first day of each month to (the name of the funeral home through which the policy was written); also a note addressed "To the Policy Holder", saying that by purchasing the policy they made a valuable addition to the program of family security; that the company stands ready at all times to cooperate in keeping the protection in line with the needs, and inviting communication with the company's nearest representative if changes are desired. A further legend on the jacket is: "Remember, your first duty is family security. The Family Security Life Insurance Company is owned and operated by South Carolina Funeral Directors for the People of South Carolina".

33. As the business of the plaintiff company increased rapidly its competitors became active. At meetings of agents of the competing insurance companies, pressure for legislation to destroy plaintiff company and to proscribe its agents was agreed upon. Division developed, too, among the morticians themselves and some of them joined with the competing insurance companies in promoting special legislation intended to destroy plaintiff company and its business. As a result of this pressure, the Legislature of South Carolina duly enacted, and the Governor approved on April 14, 1948, the Act in question, which reads as follows: (Omitting the title)

"Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, *or to permit its officers, agents, or employees to own, operate or maintain any such funeral or undertaking business.*

"Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker, or mortuary to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

"Section 3. *It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.*

"Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by a fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard labor for not exceeding six (6) months, or both, such fine and imprisonment within the discretion of the Courts." (Emphasis added)

34. The Act affects no other insurance company than the plaintiff insurance company, nor the agents of any insurance company other than the agents of the plaintiff company; it was designed to destroy the plaintiff insurance company; this statute foreclosed plaintiff Lanford from pursuing further his established insurance business, simply because he was also employed by a mortuary; it likewise made it impossible for plaintiff company to license employees of mortuaries as its agents, though this was its established method of operation.

35. Counsel for defendants admitted in open court that he knew of no insurance company, officer or employee of

any insurance company who desired to go into the mortuary business.

36. The Insurance Commissioner and his Chief Actuary approved the policy contracts of the plaintiff insurance company in late February, 1948. Prior to February 17, 1948, it had issued only two policies in the amount of $250.00 each. Its volume of business, as stipulated by the parties to this action is shown by the following tabulation in the stipulation:

Date	No. Policies	Amount of Insurance
March 1, 1948	91	$40,375.00
March 27, 1948	481	156,750.00
April 10, 1948	1071	338,750.00
April 17, 1948	1484	453,500.00
April 24, 1948	1876	563,750.00
May 1, 1948	2350	709,000.00
May 8, 1948	2824	838,375.00

37. On February 9, 1948, Mr. A. M. Orgain, President of the Life Underwriters Association of South Carolina, sent out a circular letter advising that the House Bill had been introduced making it unlawful for any life insurance company to own, operate, or maintain a funeral or undertaking business, or for any officers, agent, or employees of such business to be licensed as agents, salesmen or solicitors for any life insurance company, and urging their immediate support of the bill, and asking that each group of underwriters addressed, call upon its members to "contact their representatives in the Legislature".

38. In its issue of February 26, 1948, reporting a meeting of insurance men, and their voting to organize a "Life Underwriters Association of Union County", the Union Daily Times said that Mr. Orgain, President of the South Carolina Life Underwriters Association, addressed the meeting, saying that if the bill did not pass, the livelihood of 4200 men would be endangered.

39. Mr. Orgain later appeared before the Senate Committee of Banking and Insurance to speak in favor of the bill, and said that the Union Newspaper had not quoted him

correctly, and that he had said "this would affect approximately 4200 life insurance men in the State of South Carolina", and that the life insurance men were one hundred per cent against the method of writing insurance proposed by the plaintiff insurance company. He said further: "I tell you again . . . as I have admitted before every group that I have spoken that they have a life insurance company that is organized under the State law, and has met every law that is on the books, and they are running on the Commissioner's Standard of arriving at rates, and we are not in any way shape or form or fashion attacking the life insurance company's proposal to do this. We are attacking . . . the method of distribution". He also testified as follows: "Senator Mozingo: * * * Do you have any single illustration of any policy holder under the operation of this plan who has been abused, cheated, defrauded, or anything else, or any complaint of any policy holder? Mr. Orgain: No, sir. Senator Mozingo: I am not representing the funeral interest, but I have had complaints in my office about insurance companies. I just wondered if you had any specific illustration in South Carolina against the mortuary insurance business? Mr. Orgain: No, sir."

40. Mr. Nat Turner appeared before the Committee saying that he represented Carolina Life Insurance Company, which is engaged in the industrial life insurance business and has been for forty years, and that his company was in favor of the passage of the bill, and hoped "that this position on our part is not actuated solely because of the monetary gains that we might receive over a period of years by keeping one more insurance company out of business. . . . Other insurance companies have stated that they are in favor of the bill's passage . . . I understand that the agents of our company have expressed favor with the bill, and disfavor with the idea of business being written through undertakers and through mortuaries".

41. Mr. McDougald, an undertaker of Anderson, South Carolina, and Mr. Ward, attorney for Mr. McAfee, an undertaker of Greenville, South Carolina, testified before the Senate Committee during the hearings on the bill, favoring its adoption. Both said that "5% for collection" was inade-

quate compensation to the funeral director. (Tr. page 11, and page 24). In reply, Mr. Honig, Vice President of the plaintiff insurance company, pointed out the error in the 5 per cent impression they had, and stated that "it is not 5%; it is 15%". (Tr. page 64)

42. The insurance Commissioner relicensed the plaintiff insurance company, and all its agents, including the 51 connected with the undertaking or mortuary business, as of March 31, 1948. He thereby determined and declared that these 51 agents were "competent and trustworthy persons to engage in the classification of insurance business they intended to engage in".

43. The Court recognized the age-old dread of pauper funerals prevailing among the wage-earning and low income groups, and the corresponding anxiety that their families be spared this, as well as the burden of funeral and burial expenses; and that "Industrial Insurance" is primarily designed to insure the prepayment of these expenses in small installment payments, while the earning capacity is unimpaired.

44. Thus far the plaintiff insurance company has paid two death claims. In one case the deceased insured was buried by the mortuary through whose agency the policy was written; and the other, the deceased insured was buried by a competing mortuary, who had no connection with the plaintiff insurance company.

45. The record shows that in one instance at least (and the record does not indicate whether this case is instanced as an isolated example or as illustrative of a common practice) the agent of the insurance company selling this type of insurance was an employee of a mortuary. The record also discloses that M. W. Bobo, Sr. of Spartanburg, South Carolina, for more than twenty-five years was an undertaker competing with the Floyd Mortuary, and during the same time he was also licensed as an agent for the Woodmen of the World, selling life insurance policies issued by the Woodmen of the World. So far as the record shows, no improper advantages of any kind were taken of any assured, or of the fact that an agent selling it was connected

with a mortuary. The record shows that the Floyd Mortuary obtained as many, if not more, Woodmen of the World funerals than did its competitor Bobo Undertaking Company.

46. The statute in question corrects no discernible public evil, and no public benefit is achieved by it.

47. The "Insurance Law" (45 S. C. Stat. 322-472) is ample to correct any evils that defendants contend may result from the operation of the plaintiff insurance company's business, or the licensing of its officers and employees as insurance agents, or the licensing of any funeral director or undertaker as insurance agents.

Conclusions of Law

1. Federal jurisdiction and equity jurisdiction exist.

2. The statute in question is arbitrary and discriminative and designed to destroy, and will destroy, if enforced, the plaintiff insurance company and its business, and deprive it and its agents of the right to do business in a lawful manner, and pursue a necessary, useful, and lawful gainful calling, with no discernible public evil to be corrected, or public benefit to be achieved, and for these reasons it violated the due process and equal protection clauses of the United States Constitution.

3. Plaintiffs are entitled to the injunctive relief prayed for and entry of appropriate judgment is directed accordingly.

August 11, 1948.

United States Circuit Judge.

(S.) C. C. WYCHE,
United States District Judge for the Western District of South Carolina.

(S.) GEORGE BELL TIMMERMAN,
United States District Judge for the Eastern and Western Districts of South Carolina.

A true copy: Attest.
[SEAL.]

ERNEST L. ALLEN,
Clerk, U. S. District Court.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA; COLUMBIA DIVISION

Filed Aug. 12, 1948. Ernest L. Allen, C. D. C. U. S. E. D. S. C.

FAMILY SECUITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. Russell Floyd and William E. (William P.) Lanford, *Plaintiffs*,

vs.

HONORABLE JOHN M. DANIEL, as Attorney General of South Carolina, Honorable L. George Benjamin, as Insurance Commissioner of South Carolina, and B. B. Brockman, as Sheriff of Spartanburg County, *Defendants*

Order

C. A. 1918

Upon the pleadings, stipulations and evidence submitted by the parties at the hearing in this Court,

It Is Ordered and Adjudged, this 11th day of August, 1948, for the reasons set forth in the Opinion of the Court filed herein that a permanent injunction be issued enjoining the defendants and each of them, their agents, deputies and subordinates, from taking any steps or proceedings of any nature whatever, criminal or otherwise, against the plaintiffs, the plaintiff insurance company's officers, agents or employees, to enforce the provisions of a statute enacted by the General Assembly of South Carolina, approved April 14, 1948, entitled, "An Act making it unlawful for any Life Insurance Company, Its Officers, Agents, or Employees to Own, Operate or Maintain a Funeral or Undertaking Business; or Contract, or Agree with any Funeral or Undertaking Establishment to Conduct the Funeral of any Person Insured by Such Insurance Company; or for any Funeral or Undertaking Establishment, Its Agents, Officers, or Em-

ployees to be Licensed as Agent, Salesman or Solicitor for any Life Insurance Company Doing Business in this State."

(S.) C. C. WYCHE,
United States District Judge for the Western District of South Carolina.

(S.) GEORGE BELL TIMMERMAN,
United States District Judge for the Eastern and Western Districts of South Carolina.

I dissent.

(S.) A. M. DOBIE,
U. S. Circuit Judge.

A true copy: Attest.

[SEAL.]

ERNEST L. ALLEN,
Clerk, U. S. District Court Eastern District of South Carolina.

APPENDIX "D"

Filed. Aug. 12, 1948. Ernest L. Allen, C. D. C. U. S., E. D. S. C.

Civil Action #1918.

(FAMILY SECURITY LIFE INS. CO. v. DANIEL)

DOBIE, Circuit Judge, dissenting:

I think the South Carolina Statute is constitutional, so it would seem proper for me to state briefly the reasons that compel me to reach this conclusion.

Certain principles favoring this view are so well established as to require little need of citations. The police power of the State is very broad and especially is this true when, as here, the subject matter of a statute, namely insurance, is a matter of public interest. And it has also been

held that the undertaking business is one of public concern. Walton v. Commonwealth, 187 Va. 275, 46 S. E. (2d) 373; *State v. Blackwell*, ——, 196 S. C. 313, 13 S. E. (2d) 433. There is a primary presumption of the constitutionality of a State statute in the light of the Federal Constitution and a strong showing must be made by the party attacking the constitutionality of the statute. Where the business is one of public concern and the State Legislature, on any reasonable ground, thinks that an evil exists which ought to be remedied, and where the legislative remedy has any rational relation to this evil, the statute is valid. Only where the statute is quite arbitrary or capricious and utterly unreasonable, should the courts strike the statute down as unconstitutional. See 16 C. J. S. ##174, 668; 11 Am. Jur., Commerce, #94; Const. Law, ##235, 284, 303, 305; 12 Am. Jur., Const. Law, ## 567, 575, 655. See, also, Fitzpatrick v. Liquor Control Commission, 316 Mich. 83, 25 N. W. (2d) 118 (upholding a State statute forbidding the employment of women as bartenders); Dufour v. Maize, 358 Pa. 309, 56 Atl. (2d) 675 (upholding Pennsylvania Bituminous Coal Open Pit Mining Act); United States v. Southeastern Underwriters, 322 U. S. 533; Merchants Liability Co. v. Smart, 267 U. S. 126.

In the very important case of Osborn v. Ozlin, 310 U. S. 53, 65-66, Mr. Justice Frankfurter stated:

> "It is not our province to measure the social advantages to Virginia of regulating the conduct of insurance companies within her borders insofar as it affects Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition. The state may fix insurance rates, *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389; it may regulate the compensation of agents, *O'Gorman & Young* v. *Hartford Fire Insurance Co.*, 282 U. S. 251; it may curtail drastically the area of free contract, *National Ins. Co.* v. *Wanberg*, 260 U. S. 71. States have controlled the expenses of insurance companies, New York Insurance Law, Consoli-

dated Laws of New York, c. 28 =244, and Wisconsin Statutes, =201.21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N. Y.) pp. 403-18 (1906). They have also promoted insurance through savings banks; see Berman, The Massachusetts System of Savings Bank Life Insurance, Bulletin No. 615, U. S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, *Green v. Frazier*, 253 U. S. 233, or might take 'the whole business of banking under its control,' *Noble State Bank* v. *Haskell*, 219 U. S. 104, 113. If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. *LaTourette* v. *McMaster*, 248 U. S. 465. All these are questions of policy not for us to judge. For it can never be emphasized too much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

And, in LaTourette v. McMaster, 248 U. S. 465, 467-468, Mr. Justice McKenna observed:

"This contention depends upon the character of the business of insurance, and it was decided in *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, to be clothed with a public interest and subject, therefore, to the regulating power of the State. And it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged—is an instrument of such consummation. The statute

makes him the representative of the insured. He is also the representative of the insurer (*Hooper* v. *California*, 155 U. S. 648, 657), and his fidelity to both may be the concern of the State to secure. As said by the Supreme Court of the State: 'It is important for the protection of the interests of the people of the State that the business should be in the hands of competent and trustworthy persons.' And we may say that this result can be more confidently and completely secured through resident brokers, they being immediately under the inspection of the Commissioner of Insurance. The motive of the statute, therefore, is benefit to insurer and insured and the means it provides seem to be appropriate.

"But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise.' It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 365, 366, and cases cited; also *Bunting* v. *Oregon*, 243 U. S. 426, 437."

It seems to me that there is a very real evil in the case before us. A South Carolina statute prohibits the payment of life insurance policies in either services or merchandise. Code, 1942, §7984, 36 Stat. 234. Plaintiffs here make much of the fact that the policy is payable to a stated beneficiary and there is no contractual obligation requiring that the undertaker who was the agent writing the policy must take care of the funeral. It is very significant, though, that the policy is enclosed in a jacket-envelope. On this jacket-envelope is printed in large red capital letters: "Guaranteed Protection for Prepayment of Funeral Expenses of" followed by a blank for the name of the insured. When the policy is written, as will usually be the case, by an undertaker, the name of this undertaker will be typewritten on this jacket-envelope with a statement that the premium payments are due each month and payable to the undertaker. At the bottom of this jacket-envelope is also printed in

large capitals: "The Family Security Life Insurance Company is Owned and Operated by South Carolina Funeral Directors For the People of South Carolina." Then, on the face of the policy is a "Facility of Payment" Clause which would clearly justify the insurer in paying the proceeds of the policy to the undertaker conducting the funeral. I therefore think that the constitutionality of the statute could be sustained solely on the ground that in actual practice the statute plugs up a loop-hole and prevents a subtle evasion of the South Carolina law prohibiting the payment of life insurance policies in merchandise or services.

It has been held in a number of cases that a life insurance agent, in certain aspects, acts for both parties—the insurer and the insured, and we know that life insurance companies are stressing the role of the agent as a counselor to the insured. *LaTourette* v. *McMaster*, 248 U. S. 465, 467-468. There are many situations in our case which would place the insurer-undertaker in a rather parlous position. If the undertaker who writes the policy secures the funeral, it then becomes to the interest of the undertaker-agent to have the policy paid in full. If, on the other hand, the funeral is to be conducted by some other undertaker, or this is even contemplated, the undertaker-agent has a club to compel his securing the funeral.

There is evidence in the affidavits that Mr. Floyd, in his campaign to secure undertakers as agents for his Company, stated that this insurance would be a means of confining the undertaking business in South Carolina to the undertakers who are Floyd's agents and that it would be used as a means of discouraging other men, particularly veterans, from embarking upon this business. There was also some evidence in some of the affidavits that such a result had been brought about in some of the far Southern States.

The undertaker-insurance agent receives for his services in collecting the premiums 15%. Since these amounts are very small, this is a trifling consideration and the undertaker agent is tempted to secure his real remuneration out of conducting the funeral. In one specimen policy, the monthly payment premium is $1.57 so that the undertaker-

agent would receive less than twenty-five cents a month for collecting these premiums.

The undertaker-agent writing the policy knows, of course, the amount of the insurance. This affords him a strong temptation to charge for the funeral the full amount of the insurance, even where the insured is a person of very scant means. We must notice, too, that these policies will be written in small amounts for people of little economic substance and probably less intelligence, who will be putty in the hands of a strong and forceful insurer-undertaker.

There seems to me to be little merit in the suggestion of the plaintiffs that this is the only Company now engaged in this type of business in South Carolina. If these plaintiffs are successful, and if the Company writes many policies, as it seems to have done, other companies will undoubtedly be attracted to this field.

The statute is couched in general terms and applies to all undertakers or life insurance companies and their agents. If a State has a right to regulate race tracks, certainly a statute directed at all race tracks would not be invalid merely by virtue of the fact that at the time of the enactment of the statute, there was only one race track within the State.

The two cases cited by the plaintiffs most clearly in point were unduly restrictive. In *Hauser* v. *North British Insurance Co.*, 206 N. Y. 455, 100 N. E. 52, the statute limited the insurance business solely to those principally engaged in that business and to real estate agents. All others, however well-qualified, were barred. In *Northwestern Insurance Co.* v. *Fishback*, 130 Wash. 490, 228 Pac. 516, the statute limited the insurance company to one agent in cities of less than 50,000 inhabitants and to two agents in cities of over 50,000, however great might be the actual need of additional agents. *Cf. Liggett Co.* v. *Baldridge*, 278 U. S. 105; *Tyson* v. *Banton*, 273 U. S. 418; *Lakeland Highlands Co.* v. *Mayo*, 28 F. Supp. 44, 46. In our case, the statute leaves the field of insurance wide open, with the exception of undertakers, and for the reasons that I have stated, it seems to me that the undertaking business and the life insurance business, like oil and water, do not mix.

There has been a decided swing in the viewpoint of the United States Supreme Court in this field. Formerly, the Court seemed willing to strike down State statutes on the score that these statutes contravened the Fourteenth Amendment. The dissenting opinions of Holmes and Brandeis in the earlier cases have now been quite generally upheld. Said Mr. Justice Holmes, in his dissenting opinion in *Liggett Co.* v. *Baldridge*, 278 U. S. 105, 115: "The Constitution does not make it a condition of preventive legislation that it should work a perfect cure. It is enough if the questioned act has a manifest tendency to cure or at least to make the evil less." The modern cases have stressed the idea that questions of policy are for the legislature and not for the courts, and that courts cannot strike down a statute merely because they think the statute is unwise or because it is not the best remedy for the apparent evil. These cases give wide latitude to State legislatures for experimental legislation in economic and social fields. *Powell* v. *Pennsylvania*, 127 U. S. 678; *Carolene Products* v. *United States*, 323 U. S. 18; *Sage Stores* v. *Kansas*, 323 U. S. 32. Particularly ample is this power to protect a person deemed by the legislature (as here) to be the weaker of the contracting parties. See, *Advance-Rumely Thresher Co.* v. *Jackson*, 287 U. S. 283.

To repeat, when, as here, there is an evil which is reasonably apparent and when the statute has some fair relation as a remedy for the evil, the courts are powerless to interfere. It does not seem to me, in the light of what I have set out above, that we can brand the statute here as being arbitrary, unreasonable or capricious. Accordingly, I think the statute before us is constitutionally valid and the injunction sought by the plaintiffs should be denied.

A True Copy: Attest.

[SEAL.]

(S.) ERNEST L. ALLEN,
Clerk, United States District Court, Eastern District of South Carolina.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
DEC 18 1948

BRIEF AND APPENDIX FOR APPELLANTS

Supreme Court of the United States

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

versus

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

JOHN M. DANIEL,
Attorney General of South Carolina,
T. C. CALLISON,
J. MONROE FULMER,
Assistant Attorneys General.

EDGAR A. BROWN,
Barnwell, S. C.,
NATHANIEL A. TURNER,
DAVID W. ROBINSON,
R. HOKE ROBINSON,
Columbia, S. C.,
Counsel for the Appellants.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Specification of Errors Intended to be Urged	2
Statement	4
Summary of Argument	7
Argument:	
I. Presumption of Constitutionality	9
II. The Businesses of Insurance and Undertaking Are Subject to State Regulation; Therefore the Relationship Between Them is Subject to Regulation	11
A. The public interest in the business of insurance requires complete control and regulation by the State	11
B. The undertaking business is likewise so closely connected with morals, health and the welfare of the public as to justify state regulation	15
III. The Challenged Statute is a Valid Exercise of the Police Power of the State	16
A. The public policy of South Carolina is against funeral benefit insurance	16
B. The statute does not violate the Due Process or Equal Protection Clauses of the Federal Constitution	18
C. Liggett Co. v. Baldridge does not compel a holding that the statute is invalid	22
IV. The Court Will Not Consider Constitutional Questions Not Required by the Record	27
Conclusion	28

CITATIONS

Cases:

	Page
Advance-Rumley Thresher Co. v. Jackson, 287 U. S. 283	25
Alabama v. McAdory, 325 U. S. 450	9, 28
American Power & Light Co. v. SEC, 329 U. S. 90	28
Arizona Copper Co. v. Hanner, 250 U. S. 400	9
Asbury Hospital v. Cass, 326 U. S. 207	21, 25, 28
Baldwin v. Missouri, 281 U. S. 586, 595	24
Carmichael v. So. Coal & Coke, 301 U. S. 495	25
Carolene Products v. U. S., 323 U. S. 19	25
Coppage v. Kansas, 310 U. S. 53	11
Davies v. Bowles, 321 U. S. 144	9
Douglas v. N. Y., N. H. & H. R. R. Co., 279 U. S. 377	9
Frazer v. Fred Parker Funeral Home, 201 S. C. 88, 21 S. E. (2d) 577	15
German Alliance Ins. Co. v. Lewis, 233 U. S. 389	11
Hauser v. North British & Mercantile Ins. Co. 206 N. Y. 455, 100 N. E. 52	22
Holman v. Springfield, 311 U. S. 606	11
Kotch v. River Port Pilot Comrs., 330 U. S. 552	21, 25
LaTourette v. McMaster, 248 U. S. 465	10, 14, 20
Liggett Co. v. Baldridge, 278 U. S. 105	22, 23
Mallinckrodt Chem. Wks. v. Missouri, 238 U. S. 41	9
Mayo v. Lakeland Highlands, 309 U. S. 310	25
Merchants Ins. Co. v. Smart, 267 U. S. 126	11
Momeier v. McAlister, 203 S. C. 353, 27 S. E. (2d) 504	15
National Ins. Co. v. Wanberg, 260 U. S. 71	11
Nebbia v. N. Y., 291 U. S. 502	10, 25
North American Co. v. SEC, 327 U. S. 686	28

CITATIONS—Continued

	Page
O'Gorman v. Hartford, 282 U. S. 51	11, 25
Orient Ins. Co. v. Daggs, 172 U. S. 557	11
Osborn v. Ozlin, 310 U. S. 53	11, 15
Powell v. Pennsylvania, 127 U. S. 678	25
Prudential v. Benjamin, 328 U. S. 408	11, 13
Queenside Realty Co. v. Saxl, 328 U. S. 80	10, 20, 25
Robbins v. Hennessey, 86 Ohio St. Rep. 181, 99 N. E. 319	17
Robertson v. California, 328 U. S. 440	15
Sage Stores v. Kansas, 323 U. S. 32	25
Schine Chain Theaters v. U. S., 92 L. Ed. Adv. 871	28
SEC v. Joiner, 320 U. S. 344	10
Shelley v. Kraemer, 92 L. Ed. Adv. 845	24
Slaughter-House Cases, 16 Wall. 36, 81, 21 L. Ed. 394, 410	24
South Utah Mines v. Beaver Co., 262 U. S. 325	9
State Board of Funeral Directors v. Cooksey, 147 Fla. 337, 2 So. (2d) 502	15
State v. Blackwell, 196 S. C. 313, 13 S. E. (2d) 433	15
Stephenson v. Binford, 287 U. S. 251	9
Strauder v. West Virginia, 100 U. S. 303	24
Tigner v. Texas, 310 U. S. 141	21
Tomlinson v. Jessup, 82 U. S. 454	21
Toombs v. Citz. Bk., 281 U. S. 643	9
U. S. v. Delaware & Hudson, 213 U. S. 366	28
U. S. v. S. E. Underwriters, 322 U. S. 533	11
Walton v. Commonwealth, 187 Va. 275, 46 S. E. (2d), 373	15
West Coast Hotel Co. v. Parrish, 300 U. S. 379, 81 L. Ed. 703	25

CITATIONS—Continued

Textbooks:

	Page
11 Am. Jur., Const. Law, Sec. 102, page 737	10
11 Am. Jur., Const. Law, Sec. 109, page 746	9
11 Am. Jur., Const. Law, Sec. 141, page 818	10
Cooley, Constitutional Limitations, page 1329	15

Statutes:

	Page	Appendix
California Codes, Ins. (Deering's), § 10114	16	
Florida Code, Anno., § 638.16	16	
Florida Code, Anno., § 639.01	18	
Florida Code, Anno., § 639.02	16	
Georgia Code, 56-9920	18	
Georgia Code, 56-9923	16	
Illinois Rev. Stat. 1941, Ch. 73, § 956	16, 18	
Indiana Stat. Anno. (Burns), 1933, Ch. 63, § 727(d)	16	
Kansas Laws 1945, Ch. 256, p. 447	16	
Kentucky Rev. Stat. 1948, § 303.120, 303.121	16	
Maine Rev. Stat. 1944, Vol. 1, Ch. 56, § 138	16	
Maryland Anno. Code 1939, Art. 48 (a), § 110	16, 18	
McCarran Act (Mar. 9, 1945), 15 USC 1011	13	
Missouri Laws 1945, § 6028	16	
Missouri Rev. Stat. 1939, Sec. 5454	16, 18	
New York Code (McKinney), Insurance, § 165	18	
North Carolina Acts 1945, Ch. 377, § 58-33.1	16	

CITATIONS—Continued

	Page	Appendix
Ohio Anno. Code 1940, § 666	18	
S. C. Acts of 1947, 350, Sec. 65	16	35
S. C. Acts of 1948, 787, 45 Stat. 1947 3,	4	33
S. C. Code of 1942, §§ 5262-5271	15	
S. C. Code of 1942, § 7676	21	36
S. C. Code of 1942, §§ 7947, 7967	18	
S. C. Code of 1942, § 7984, 36 Stat. 234	2, 16	34
S. C. Constitution of 1895, Art. IX, §§ 2, 17	21	36
36 S. C. Stat. (1929), 234	2	
45 S. C. Stat. 1947	2	
Tennessee Code 1932, § 7151 (1)	16	
15 USC 1011, McCarran Act (Mar. 9, 1945)	13	
28 USCA 380, Sec. 266 Judicial Code (New 28 USCA 1253, 2284)	2	
Wisconsin Laws 1933, Ch. 187, § 156.12	16	

BRIEF AND APPENDIX FOR APPELLANTS

Supreme Court of the United States

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

vs.

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

The Appellants, who are State officials charged with the enforcement of the questioned statute, seek review of a District Court Judgment (R. 167) granting an injunction permanently restraining the enforcement of the statute.

OPINION BELOW

The opinion and dissenting opinion in the District Court for the Eastern District of South Carolina are reported at 79 F. Supp. 62.

JURISDICTION

The judgment of the three-Judge District Court was entered on August 12, 1948. The petition for appeal was

filed August 27, 1948. Probable jurisdiction was noted October 25, 1948 (R. 183). The jurisdiction of this Court rests on Section 266 of the Judicial Code (28 USCA 380, new 28 USCA 1253; 2284).

QUESTION PRESENTED

Does the South Carolina statute prohibiting domestic insurance companies which are owned, managed and directed by South Carolina undertakers from writing life insurance through undertakers as agents, with premiums payable at undertaking parlors and benefits payable through undertakers, contravene the due process or equal protection clauses of the Fourteenth Amendment?

STATUTES INVOLVED

The South Carolina statute under attack, 1948 Acts No. 787, 45 Statutes 1947, is set out in full in the Appendix, and in the majority opinion (R. 147).

Incidentally involved are the South Carolina statutes prohibiting the payment of life insurance benefits in merchandise or services. 36 Stat. (1929) 234, 1942 Code 7984, 1947 Acts 350. Appendix 34

Constitutional and statutory provisions making corporate charters subject to repeal or amendment at the pleasure of the Legislature are found in Article IX, Sect. 2, 17, of the Constitution of 1895, and in Section 7676 of the Code of 1942. Appendix 36

SPECIFICATION OF ERRORS INTENDED TO BE URGED

The United States District Court for the Eastern District of South Carolina, Columbia Division, erred:

1. In holding that the South Carolina statute (45 Stat. 1947) making it unlawful for life insurance companies to own and operate funeral homes and for undertakers to act as life insurance agents is arbitrary and discriminative and therefore in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

2. In failing to hold that the South Carolina statute of 14 April 1948 (45 Stat. 1947) was a proper exercise of the police power of the State in the regulation of insurance companies, insurance agents and morticians, each being engaged in a business or occupation clothed with a public interest.

3. In holding that the validity of the entire statute was in issue, whereas the correct ruling should have been that the issue was whether the statute deprived the plaintiffs of equal protection or due process.

4. In holding that the burden of showing that the challenged state legislation is valid is upon the defendant officers of the State when it should have held that the plaintiffs have the burden of showing beyond a reasonable doubt that the statute violates the Federal Constitution.

5. In holding (Findings 37-41, R. 163-165) that the fact that the passage of the challenged legislation was advocated before the Legislature by representatives of undertaking establishments and insurance companies was pertinent on the issue of constitutionality and in failing to hold that under our system of government every citizen has a right to appear before legislative committees in support of or in opposition to proposed legislation.

6. In invading the field of legitimate state legislation and substituting the judgment of a Federal Court on the

wisdom of the challenged legislation for the judgment of the State Legislature to whom it had been entrusted under our Federal system.

7. In permanently enjoining state officials from enforcing valid state legislation.

STATEMENT

This is an action by a domestic insurance company, its controlling stockholders and one of its agents, to enjoin the enforcement of a state statute (45 Stat. 1947) introduced in the South Carolina Legislature as Bill 1141 on February 3, 1948, and enacted into law by the Governor's approval on April 14, 1948. (Appendix 3, 4.)

In effect the Act divorces the businesses of life insurance and undertaking from each other by making it unlawful to have interlocking control of the two businesses or to have persons connected with one of these businesses operating or being agent for the other business. The Act was passed by large majorities in both houses of the South Carolina Legislature after full public hearings by the Banking and Insurance Committees of the Legislature. At these hearings both proponents and opponents of the measure, including the appellee J. Gordon Floyd and other officers of the appellee corporation, were present and testified (R. 84, 94, 104, 117, 125.)

The Family Security Life Insurance Company, Appellee, is a South Carolina insurance corporation, chartered in 1936 as the Pee Dee Life Insurance Company with an authorized capital of $50,000.00 and a paid-in capital of $500.00. In the insolvency proceedings involving this company its charter was sold and in 1941 became the property of the Appellees, J. Gordon Floyd and W. Russell Floyd. The corporate name was changed to Future Security Life In-

surance Company in 1941 and on June 13, 1947, to its present name. During 1947 its authorized capital was increased from $5,000.00 to $50,000.00, its paid-in capital from $500.00 to $11,860.00 (R. 44). At the time of trial (May 19, 1948) its paid-in capital was $16,000.00, its paid-in surplus $64,000.00, making the aggregate capital account $80,000.00. Of this amount J. Gordon Floyd and W. Russell Floyd, Appellees, each owned $13,000.00, and J. E. Floyd Mortuary, Inc., which is owned by the two Floyds, owned $23,000.00. (R. 45.)

The Appellee Insurance Company has thirty-four stockholders, all of whom, except one, manage, supervise, operate or are employed by mortuaries or undertaking establishments. The individual appellees are stockholders. Four of the five directors and the President of the insurance company are either owners, managers, supervisors or operators of mortuaries or undertaking establishments. Each of the individual Appellees is a director and J. Gordon Floyd is president of the corporation. The two Floyds together with their mortuary own the controlling interest in the insurance company and fifty-one of the sixty-eight agents licensed to sell the company's policies are owners or employees of mortuaries. (R. 45.)

Until February 3, 1948, the date of the introduction of House Bill 1141, which became law on April 14, 1948 (45 Stat. 1947), the Family Security Life Insurance Company had been inactive. Immediately after the Bill was introduced Family Security pressed the sale of "Burial Insurance" as is shown by a comparison of the insurance in force on the several dates during the progress of the legislation. (R. 45.)

Date	*Policies in Force*	*Amount Insurance in Force*
1947		
Dec. 31	2	$ 500.00
1948		
Feb. 3 (date introduction Bill)	2	500.00
Feb. 17 (date favorable report House Committee)		50,000.00
Apr. 10 (Passage by Senate)	1,671	338,750.00
Apr. 14 Bill became law by Governor's Approval.		
Apr. 17 (Date Federal Injunction)	1,484	453,500.00
May 8	2,824	838,375.00

The method of doing business is illustrated by the policy and jacket issued by J. A. Bass who is the owner of the Bass Funeral Home of Rock Hill, S. C., and a similar establishment at Fort Mill, S. C., which he opened about March 1, 1948. He is the agent of the Family Security Life Insurance Company and sent out over his signature advertising material which is shown in the record. (R.46). He wrote and the Family Security Life Insurance Company issued on April 1, 1948, the latter's policy No. 1091-1 to Nancy Ann Wentz of Rock Hill, S. C., whose age is sixty-seven years, providing for monthly premiums of $1.57 and insurance in the amount of $125.00, delivering the policy in a jacket advertising the Bass Funeral Home. (R. 37, 46.)

The Appellee Company names mortuary owners and employees as agents, solicits business through them, collects the premiums at the mortuary home and sends the matured policy proceeds to the undertaker-agent for delivery to the insured's beneficiary. This is clearly forecast by the terms of the policy, the language of the jacket and of the advertising matter, and established by the appellants' supporting affidavits. (R. 18A-D, 23, 24, 26, 27, 29, 37.)

Under the Facility of Payment Clause in the policies the proceeds may be payable to an undertaker. One of the purposes of the plan was to "channel" the insurance pro-

ceeds to the undertaker who wrote the business, thus obtaining more business and more profits for that undertaker. Another purpose is to keep the returning service men from competing, "freezing" the business of established undertakers who become stockholders of Family Security. In other states where similar plans have operated, monopoly conditions in favor of the undertakers who join in the plan have arisen. (R. 23, 25, 28, 30.) These effects were presented to the Committees of the South Carolina Legislature. (R. 84-87.)

When the Insurance Laws of South Carolina were revised in 1947 the appellee J. Gordon Floyd was instrumental in obtaining the incorporation into the new Insurance Code of Section 65 (Acts of 1947, page 350) prohibiting the payment of life insurance benefits in funeral services. (R. 107.) However, when the 1948 Legislature enacted a statute prohibiting the indirect accomplishment of the same result, he and his insurance company brought this action to restrain its enforcement.

Two members of the 3-Judge District Court held that the statute violated the plaintiffs' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The Court did not hold the legislation invalid under the Privileges and Immunities Clause or under the Contract Clause. The dissenting opinion of Circuit Judge Dobie held that the State statute was a proper exercise of its legislative power and not in violation of any Federal Constitutional right of the plaintiffs.

SUMMARY OF ARGUMENT

Where a state law is challenged in a Federal District Court as in contravention of the Fourteenth Amendment, the Court may not strike down the statute unless it is con-

vinced beyond a reasonable doubt that the complainants are deprived of due process or equal protection.

In passing upon the constitutional issue it is the Court's duty to lay the statute beside the Constitution and if it finds that the statute does not violate the plaintiffs' rights under the Amendment its function is complete. It has no concern with the wisdom of the law, it matters not who advocated the passage of the legislation.

South Carolina, having reserved the right to alter or amend the charters of its domestic corporations, may restrict their corporate activity without depriving the company of due process or equal protection. Since there is a substantial public interest in life insurance and in funeral homes, the State may regulate each of these businesses and may divorce the one from the other.

Where for many years the state has, without challenge, forbidden insurance companies to pay matured life policies in funeral services, the state may, without violating Federal Constitutional restrictions, prohibit the evasion of this statute under a scheme whereby the insurance is written by undertakers and payable in cash at the funeral parlor. Such a statute is not arbitrary and is not discriminatory merely because only one insurance company violated it.

A South Carolina statute which prohibits domestic life insurance companies which are owned, managed and controlled by morticians, from writing burial insurance through undertakers as agents, with premiums payable at funeral homes and benefits through undertakers, does not deprive either the insurance companies or their undertaker stockholders and agents of equal protection or due process within the meaning of the Fourteenth Amendment.

ARGUMENT

I.

Presumption of Constitutionality

This Court is passing upon the validity of a State statute which has not been construed by the State Supreme Court; it must therefore indulge in every presumption of constitutionality and construe the statute in any way which its language permits in order to sustain its validity.

> The Supreme Court of the United States will, in case a state statute is susceptible of a construction which will render it constitutional, resolve all doubt in favor of its constitutionality, in the absence of any construction of the statute by the state courts, for there is a presumption that a state statute will be so construed by the state courts as to uphold it. Furthermore, in the absence of a construction of a statute by a state court the Supreme Court of the United States, unless obliged to do otherwise, should not adopt a construction which might render the statute of doubtful validity, but should await a determination of the matter by the state court.
>
> 11 Am. Jur., Const. Law, Sec. 109, page 746.

Accord: *Toombs v. Citizens Bk.*, 281 U. S. 643; *South Utah Mines v. Beaver Co.*, 262 U. S. 325; *Douglas v. N. Y., N. H. & H. R. R. Co.*, 279 U. S. 377; *Mallinckrodt Chem. Wks. v. Missouri*, 238 U. S. 41; *Ariz. Copper Co. v. Hammer*, 250 U. S. 400; *Stephenson v. Binford*, 287 U. S. 251.

All doubt should be resolved in favor of the constitutionality of the statute. *Davies v. Beadles*, 321 U. S. 144; *Alabama v. McAliley*, 325 U. S. 450. The validity of a statute is to be determined from its general purpose and its sufficiency to accomplish the end desired, not from its ef-

fect in a particular case. 11 Am. Jur., Const. Law, Sec. 102, page 737. Cf. *SEC v. Joiner*, 320 U. S. 344.

A Court cannot inquire into the wisdom of legislation or the motives or intention of the Legislature which enacted a particular statute. *LaTourette v. McMaster*, 248 U. S. 465; *Queenside Realty Co. v. Saul*, 328 U. S. 80; *Nebbia v. N. Y.*, 291 U. S. 502, 11 Am. Jur., Const. Law, Sec. 141, page 818.

A careful reading of the majority opinion of the District Court reveals that the Court did not give full play to this presumption but in effect placed upon the state the burden of proving the constitutionality of the statute (R. 139):

> Their argument is silent of any reasonable basis for this limitation upon the right of employment by a citizen. There is nothing to show that the interest of the public generally as distinguished from other industrial insurance companies, requires such interference.

Yet in the same breath the Court makes the somewhat contradictory statement that "in their arguments they attempted to give some coloring of reason to this arbitrary legislation." (R. 140.)

The District Court even weighed the motives behind the advocacy of this legislation (R. 137):

> As the business of the plaintiff company increased rapidly its competitors became active. At meetings of agents of the competing insurance companies, pressure for legislation to destroy plaintiff company and to proscribe its agents was agreed upon. Division developed too among the morticians themselves and some of them joined with the competing insurance companies in promoting special legislation intended to destroy plaintiff company in its business. It seems obvi-

ous from the record that this legislation had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor. As a result of this pressure, the Legislature of South Carolina enacted and the Governor approved on April 14, 1948, the challenged statute.

The question before the Court below was, and the sole question before this Court is, whether the challenged legislation as applied to these Appellees, is a valid exercise of the police power of the state. The question of what pressure groups, if any, lobbied the Bill through, whether proper or improper motives actuated them, and whether the end result is wise or unwise are questions for the Legislature, not for the Courts.

II

The businesses of insurance and undertaking are subject to state regulation; therefore the relationship between them is subject to regulation.

A. The public interest in the business of insurance requires complete control and regulation by the State.

The right of the Legislature to regulate and control under the police power professions or occupations of a public and *quasi*-public nature is fully recognized. *Coppage v. Kansas*, 236 U. S. 1; *Osborn v. Oslin*, 310 U. S. 53; *Prudential v. Benjamin*, 328 U. S. 408; *U. S. v. S. E. Underwriters*, 322 U. S. 533; *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389; *O'Gorman v. Hartford*, 282 U. S. 51; *Orient Ins. Co. v. Daggs*, 172 U. S. 557; *Merchants Ins. Co. v. Swart*, 267 U. S. 126; *National Ins. Co. v. Wanberg*, 260 U. S. 71; *Holman v. Springfield*, 311 U. S. 606.

It is not our province to measure the social advantage to Virginia of regulating the conduct of insurance companies within her borders in so far as it affects

Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestation of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition. The state may fix insurance rates, *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389, 58 L.Ed. 1011, 34 S.Ct. 612, LRA 1915-C, 1189; it may regulate the compensation of agents, *O'Gorman & Young v. Hartford F. Ins. Co.*, 282 U.S. 251, 75 L.Ed. 324, 51 S.Ct. 130, 72 ALR 1163; it may curtail drastically the area of free contract, *National Union F. Ins. Co. v. Wanberg*, 260 U.S. 71, 67 L.Ed. 136, 43 S.Ct. 32. States have controlled the expenses of insurance companies, N. Y. Ins. Law, Consolidated Laws of N. Y. Chap. 28, Sec. 244, and Wisconsin Statutes, Section 201.21; and see report of Joint (Armstrong) Ins. Investigation Committee (N. Y.), pages 403-418 (1906). They have also promoted insurance through savings banks; see Berman, The Mass. System of Savings Banks Life Insurance, Bulletin No. 615, U. S. Bureau of Labor Statistics, and New York Laws of 1938, Chap. 471. In the light of these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business just as it can operate warehouses, flour mills and other business ventures, *Green v. Frazier*, 253 U. S. 233, 64 L. Ed. 878, 40 S. Ct. 499, or might take "the whole business of banking under its control": *Noble State Bk. v. Haskell*, 219 U. S. 104, 112, 55 L. Ed. 112, 115, 31 S. Ct. 186, 32 L. R. A., N. S., 1062, Ann. Cases 1912-A, 487. If the state as to local risks could thus preempt the field of insurance for itself it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. *LaTourette v. McMaster*, 244 U. S. 465, 61 L. Ed. 262, 37 S. Ct. 160. All these are questions of policy not for us to judge, for it can never be emphasized too much that one's opinion as to the wisdom

of law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control.

Osborn v. Ozlin, supra.

The Congress of the United States has specifically recognized this public interest in the insurance business by the passage of the McCarran Act (March 9, 1945), 15 U. S. C. 1011:

> * * * The Congress hereby declares that the continued regulation and taxation by the several states of the business of insurance is in the public interest and that silence on the part of a Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states.
>
> * * *
>
> Sec. 2(a) The business of insurance and every person engaged therein shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

In commenting on the effect of this Federal statute on state law the Court in the *Prudential case, supra*, said:

> Obviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance. This was done in two ways. One was by removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided in the act itself or in future legislation. The other was by declaring expressly and affirmatively that continued state regulation and taxation of this business is in the public interest and that the business and all who engage in it "shall be subject to" the laws of the several states in these respects.
>
> Moreover in taking this action Congress must have had full knowledge of the nationwide existence of state systems of regulation and taxation; of the fact

The Legislature of South Carolina has said that the public health and public welfare are best served by having embalming done and funerals conducted by licensed embalmers and directors. It has also said that the public interest requires that these persons should not own or act as agents for the life insurance companies.[1]

III

The challenged statute is a valid exercise of the police power of the State.

A. The public policy of South Carolina is against funeral benefit insurance.

When the insurance laws of South Carolina were rewritten by the Legislature in its 1947 Session, Section 65 (Acts of 1947, 350) retained a law dating back to 1929, which made it unlawful for any insurance company to make payment or settlement of policies in merchandise or services and providing severe penalties for the violation of these provisions. Code 1942, Sec. 7984, 36 Stat. 234. The original statute provided for a penalty in the nature of a fine against the company only but in 1942 this law was amended to punish by fine or imprisonment the officers, agents or servants of the company. Appendix 34.

The Appellee J. G. Floyd was active in retaining in the new insurance code the provision outlawing payment in

[1] South Carolina is not alone in seeking to regulate the relationship between life insurance companies and funeral homes. See Florida Code Anno., § 638.16; Burns Indiana Stat. Anno. 1933, Ch. 63, § 727(d); Wis. Laws 1933, Ch. 187, § 156.12; Tenn. Code 1932, § 7151(1). (held invalid in *State v. Smith*, 164 Tenn. 199; 46 S. W. 2d 814, on the ground of the inadequacy of the caption). Cf. Mo. Laws 1945, § 6028; Kan. Laws 1945, Ch. 256, p. 447.

Similar statutes are in effect in other states. Fla. Code § 639.02; Ga. Code 56-9923; Ill. Rev. Stat. 1941, Ch. 73, § 956; Kentucky Rev. Stat. 1948, § 303.120, 303.121. Maine Rev. Stat. 1944, Vol. I, Ch. 56, § 138; Maryland Ann. Code 1939, Art. 48(a), § 110; N. C. Acts 1945, Ch. 377, § 58-33.1. Cf. Deering's Cal. Codes, Insurance § 10114; Mo. Rev. Stat. 1939, § 5454.

services of merchandise. He stated to the Senate Committee that he was opposed to that type of insurance and would fight it as long as he could (R. 107, 32). Yet here he attacks the constitutionality of a statute which outlaws burial insurance which pays off in cash but which is sold by undertakers at undertaking homes and is paid to the beneficiary through undertakers.

In the twenty years that the present law prohibiting payment in merchandise has been on the statute books its constitutionality has never been questioned. Certainly if the state can properly outlaw the payment of insurance policies in (funeral) services, it can properly and constitutionally prevent its evasion by the subterfuge of having the policy paid in cash but paid by the undertaker, who has collected the premiums at his place of business and who is also the insurance agent. The Legislature can prohibit the doing by indirection of things which it can prohibit directly.

In *Robbins v. Hennessey*, 86 Ohio State Rep. 181, 99 N. E. 319, the Court in upholding an Ohio statute making it unlawful for any insurance company engaged in the business of providing for payment of funeral, burial or other expenses, to pay or contract to pay benefits to any official or designated undertaker so as to deprive representatives of the deceased from procuring such services in the open market, used the following pertinent language:

> Whatever may have been the abuses against which the provisions of this act were directed, it clearly appears from the Act itself that the General Assembly of Ohio considered these contracts to be in restraint of trade and therefore against public policy and sought to prevent the making of all such contracts except as they might be expressly authorized by statute. . . . While Section 289 as amended was undoubtedly intended to correct abuses that had flourished under existing burial associations that desig-

nated directly in their contracts the undertaker or undertaking concern that should furnish the funeral and funeral outfit for the insured, yet in doing this the Legislature sought to make certain that the objects of the statute should not be defeated by any subterfuge or evasion.[2]

The facts in the instant case show that the Floyds acquired a pre-1939 insurance charter (Capital requirements were increased to $100,000.00 in that year. Code 1942, 7947, 7967), kept it dormant through 1947, came to the Legislature in 1947 to urge successfully a prohibition against insurance payable in (funeral) services (1947 Acts, 350), and in March 1948 began to push the sales by funeral directors of insurance policies under this old charter. Will a Court of Equity listen favorably to his complaint that the Legislature of South Carolina, having outlawed "direct" burial insurance as urged by them, went further and outlawed "indirect" burial insurance?

B. The Statute does not violate the Due Process or Equal Protection Clauses of the Federal Constitution.

Keeping in mind the public policy of the state prohibiting payment of insurance policies in merchandise or services, we think the challenged statute is aimed at a real evil.

It is true that the policies issued by the Appellee insurance company are payable to a stated beneficiary and that there is no contractual obligation requiring that the undertaker who was the agent writing the policy must take care of the funeral. It is significant, however, that the policy is enclosed in a jacket envelope. On this jacket envelope is printed in large red capital letters: "Guaranteed Pro-

[2] Laws prohibiting payment to designated undertakers are found in: Fla. Code § 639.01; Ga. Code 56-9920; Ill. Rev. Stat. 1941, Ch. 73, § 956; Maryland Ann. Code 1939, Art. 48(a), § 110; New York Code (McKinney), Insurance § 165; Ohio Ann. Code, 1940, § 666. Cf. Mo. Rev. Stat. 1939, § 5454.

tection for Prepayment of Funeral Expenses of", followed by a blank for the name of the insured. When the policy is written by an undertaker, the name of this undertaker is typewritten on this jacket envelope with a statement that the premium payments are due each month and payable to the undertaker (R. 23, 27, 37-39).

At the bottom of this jacket envelope is also printed in large capitals: "The Family Security Life Insurance Company is owned and operated by South Carolina Funeral Directors for the People of South Carolina." (R. 37.) On the face of the policy is a "Facility of Payment" clause which clearly justifies the insurer in paying the proceeds of the policy to the undertaker conducting the funeral. This clause provides that the Company may make payment to certain named relatives "or to any other person who may appear to be equitably entitled to such payment by reason of having incurred expense on behalf of the insured." (R. 18A.) It is difficult to reconcile the statement of the majority opinion in the District Court that this clause does not justify the insurer in paying the proceeds to the undertaker conducting the funeral. (R. 141.) We submit that the statute plugs a loophole and prevents a subtle evasion of the state law prohibiting the payment of life insurance policies in merchandise or services.

Some of the affidavits show that Mr. Floyd in his campaign to secure undertakers as agents for his company stated that this insurance would be a means of confining the undertaking business in South Carolina to the undertakers who are Floyd's agents and that it would be used as a means of discouraging other men, particularly veterans, from embarking upon this business. (R. 23, 28, 29.) There was also evidence that such a result had been brought about in some states, notably Alabama. (R. 23-4, 25, 30.

22. [illegible] At a national meeting of morticians a proponent of the [illegible] plan admitted that the benefits arising under it accrued to the morticians and not the insured. (R. 35.)

There are other compelling reasons why the statute is valid. The life insurance agent acts in certain aspects for both parties, the insurer and the insured, and life insurance companies are stressing the rôle of the agent as a counselor to the insured. *LaFourette v. McMaster*, 248 U. S. 465, 467, 468. The undertaker-agent receives for his services in collecting the premiums fifteen per cent. Since the premiums collected are very small this is a trifling consideration and he is tempted to secure his real remuneration out of profits on the funeral. In one specimen policy the monthly payment premium is $1.37, so that the undertaker-agent would receive less than twenty-five cents a month for collecting the premium. The undertaker-agent writing the policy knows, of course, the amount of the insurance. This presents a strong temptation to charge for the funeral the full amount of insurance even where the insured is a person of very scant means. This policy is one type of industrial insurance. The policies will be written in small amounts usually for people of limited economic substance and little business experience; people who in time of distress are easily persuaded to spend too much for the funeral of a dead relative.

The argument is made that the State of South Carolina has chartered the appellee insurance company and licensed its agents and that therefore they have some sort of a vested right to continue in the business which the state granted them the right to pursue.[1] But all corporate

[1] Compare the statement in *Queenside Realty v. Sack*, 328 U. S. 83, that "in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws."

charters in South Carolina are subject to legislative amendment or repeal. Art. IX, Sec. 2 of the State Constitution of 1895 specifically provides that corporate charters may be altered or repealed, and Sec. 17 of the same Article provides that all corporations shall hold their charters or franchises subject to the provisions of this Constitution. Since 1841 the General Assembly of the State has reserved the power to alter, amend or repeal all corporate charters. Code of 1942, Sec. 7676. The validity of this statute was upheld in an early decision of this Court, *Tomlinson v. Jessup*, 82 U. S. 454:

> The object of the reservation and of similar reservations in other charters is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the state control over its contracts with the corporators which without that provision would be irrepealable and protected from any measures protecting its obligation.

Appellees assert that the statute violates the Equal Protection Clause in that Family Security is the only insurance company in the state to which the statute applies and that the statute was passed for the specific purpose of putting that company out of business. The Fourteenth Amendment does not forbid merely because a statute affects one group differently from others. *Kotch v. River Port Pilot Comrs.*, 330 U. S. 552; *Tigner v. Texas*, 310 U. S. 141; *Federal Hospital v. Cass*, 326 U. S. 207.

A casual reading of the statute, however, shows that it is of general application. It applies to all undertakers and to all life insurance companies or their agents. If the appellee company is allowed to continue operation and is successful, other companies will undoubtedly be attracted

to this field. In fact, the Court below states that this Company has no copyright on this type of insurance and that many other insurance companies already write it. (R. 142.) All that South Carolina says is that there shall be no tie-up between the company which writes the insurance and the undertaker who performs the funeral. As Judge Dobie says in his dissent (R. 172-3):

> If a state has the right to regulate race tracks certainly a statute directed at all race tracks would not be invalid merely by virtue of the fact that at the time of the enactment of the statute there was only one race track within the state.

C. Liggett Co. v. Baldridge does not compel a holding that the statute is invalid.

The Court below relied largely on two cases, *Liggett Co. v. Baldridge*, 278 U.S. 105, and *Hauser v. North British & Mercantile Insurance Co.*, 206 N.Y. 455, 100 N.E. 52. In the *Hauser case* the New York statute limited the insurance business solely to those principally engaged in that business and to real estate agents, barring all others, however well qualified. It may be distinguished on the ground that the statute was unduly restrictive and that no real relation to the public welfare was shown. Another distinction is that there a state was passing on the validity of its own statute, while here a Federal Court is considering a state statute which has not been tested in the state courts.

The Court below states that the reasoning of this Court in the *Liggett case* "seems conclusive against the validity of the instant statute" and that "the defendants assume that the *Liggett case* if followed by this Court would require the granting of plaintiff's prayer." (R. 143.) We disagree with both statements. That case involved a Pennsylvania statute requiring every drugstore to be owned (not merely

operated) by a licensed pharmacist, and the attack on the statute was made by a foreign corporation authorized to do business in Pennsylvania. The majority opinion stressed the fact that the statute was aimed at ownership and that in view of the existence of other Pennsylvania laws prohibiting unlicensed pharmacists, impure drugs, etc., the challenged statute had no reasonable relation to the public health and therefore violated the due process clause. In the case at bar the insurance company is owned, directed and dominated by one undertaking family. It uses undertakers as agents, collectors and paymasters. It boldly sells "Burial Protection" and "Prepaid Funerals" through these undertakers. It advertises its ownership by undertakers and recommends these funeral directors as worthy of fiduciary trust even though their pocketbook interest as morticians may be in conflict with the advice the family of an assured expects from an insurance agent at the time of bereavement (R. 39, 37). Here there is much more involved than mere ownership of stock.

Assuming however that the instant case were controlled by the *Liggett case*, we are not convinced that it would be followed today. A check in the citator indicates that the Court has not cited it since 1932. In a strong dissent, in which Mr. Justice Brandeis joined, Mr. Justice Holmes said:

> The Constitution does not make it a condition of preventive legislation that it should work a perfect cure. It is enough if the questioned Act has a manifest tendency to cure or at least to make the evil less. It has been recognized by the professions, by statutes and by decisions that a corporation offering professional services is not placed beyond legislative control by the fact that all the services in question are rendered by qualified members of the profession. (Citing cases.) But for decisions to which I bow I should not

think any conciliatory phrase necessary to justify what seems to me one of the instruments of legislative power. I think, however, that the police power, as that term has been defined and explained, clearly extends to a law like this, whatever I may think of its wisdom, and that the decree should be affirmed.

In applying the Fourteenth Amendment, the Court should consider its historical origin and its purposes, as well as the language itself. The primary purpose was to secure to the negro his civil rights.[5] In fact, Mr. Justice Miller, referring to the equal protection clause, said: "We doubt very much whether any action of a state not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision."[6]

Time proved that Mr. Justice Miller was a poor prophet, but in recent years this Court has shown a tendency to uphold state statutes involving business regulation where the sole attack is under the Fourteenth Amendment. The dissents of Justices Holmes and Brandeis have frequently become the rationale of the majority in cases where this Court has given wide latitude to State Legislatures for experimental legislation in economic and social fields, stressing the idea that questions of policy are for the Legislature and not for the Courts, and that the Court must

---

[5] *Strauder v. West Virginia*, 100 U. S. 303; *Shelley v. Kraemer*, 92 L. Ed. Adv. 845.

[6] Slaughter-House Cases, 16 Wall. 36, 81, 21 L. Ed. 394, 410.

[7] "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the 14th Amendment in cutting down what I believe to be the constitutional rights of the states. As the decisions now stand I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or moral beliefs in its prohibitions. * * * We ought to remember the great caution shown by the constitution in limiting the power of the states and should be slow to construe the clause in the 14th Amendment as committing to the Court, with no guide but the court's own discretion, the validity of whatever laws the states may pass." Mr. Justice Holmes, dissenting in *Baldwin v. Missouri*, 281 U. S. 586, 595.

not strike down a state statute merely because it thinks the legislation unwise or because it is not the best remedy for the apparent evil." *Powell v. Pennsylvania*, 127 U.S. 678; *Carolene Products v. U.S.*, 323 U.S. 19; *Sage Stores v. Kansas*, 323 U.S. 32; *Nebbia v. N.Y.*, 291 U.S. 502; *Carmichael v. So. Coal & Coke*, 301 U.S. 495; *O'Gorman & Young v. Hartford F. Ins. Co.*, 282 U.S. 271; *Asbury Hosp. v. Cass*, 326 U.S. 207; *Queenside Realty v. Saxl*, 328 U.S. 80; *Kotch v. River Port Pilot Comrs.*, 330 U.S. 552; *West Coast Hotel Co. v. Parrish*, 300 U.S. 379.

> A State Legislature in the enactment of laws has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record, Courts cannot assume that its action is capricious or that with its informed acquaintance with local conditions to which the legislation is to be applied it was not aware of facts which afford reasonable basis for its action.
>
> *Carmichael v. So. Coal & Coke*, 301 U.S. 495, 510.

Where (as here) one of the contracting parties (the insured) is deemed by the Legislature to be the weaker of the two, the power to regulate is particularly broad. See *Advance-Rumely Thresher Co. v. Jackson*, 287 U.S. 283.

This Court has had occasion to point out the role of the District Court in suits of this nature. In *Mayo v. Lakeland Highlands*, 309 U.S. 310:

> The Legislation requiring the convening of a court of three Judges in cases such as this was intended to insure that the enforcement of a challenged statute should not be suspended by injunction except upon a clear and persuasive showing of unconstitutionality

---

See Palmer, Dissents and Overrulings, 34 ABA Journal, 554, 556-7; Analysis of Dissents, 34 ABA Journal 677, 680-1.

> and irreparable injury. Congress intended that in this type of suits a prompt hearing and decision shall be afforded the parties so that the state shall be put to the least possible inconvenience in the administration of their laws.

And in the same case in a separate opinion, Mr. Justice Frankfurter warned:

> We ought not to encourage the use of the judicial process for such unjustifiable attempts to set aside a state law by allowing them to be successful in result even though legally erroneous. We ought to apply what was characterized in *Massachusetts State Grange v. Benton*, 272 U. S. 525, 71 L. Ed. 387, 390, 47 S. Ct. 189, as "the important rule, which we desire to emphasize, that no injunction ought to issue against officers of a state clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury." Even if the present bill is taken at face value, it does not make out "a case reasonably free from doubt." The withdrawal of the injunction from industrial controversies made by the Norris-LaGuardia Act was in no small part due to the belief by Congress that experience had shown that the use of a legal remedy devised for a simple situation might in a totally different environment become a perversion of that remedy. Congress has also given indication in Section 266 of the Judicial Code (28 USCA 380) of its concern over the misuse of the injunction fashioned for settling an ordinary clash of private interests, to restrain the machinery of a state in carrying out some vital state policy.

Yet it was the District Court's conclusion that the legislation was unwise and unnecessary that led to the erroneous decision. The desirability of issuing burial insurance policies (Findings 15-17), the actuarial soundness of the Family Security Plan (Findings 20-23), the sufficiency

of the South Carolina "Insurance Law" of 1947 to adequately protect policy holders (Findings 25-29), the fact that the challenged legislation was advocated by competing insurance men and undertakers (Findings 33, 37-41), are the things which persuaded the Court below to strike down this statute as denying equal protection and due process. (R. 152-165.)

These are not relevant considerations for the Court. They are all factors to be considered by the Legislature, to whom our Constitution entrusts decisions involving the wisdom of laws. When a Court finds that the state has the power to pass the law its function ceases. Here the Federal District Court invaded the province of the South Carolina Legislature. Such a usurpation of power undermines not only our Federal system of division of power between State and Nation but also strikes at the principle of separation of powers among legislative, judicial and executive branches.

The Fourteenth Amendment was not incorporated into the Constitution to destroy our Federal system. Yet, carried to its logical conclusion, that is the result of the District Court decision. If a state has no power to alter the powers of its own corporations, though that power has been reserved, if a state has no power to regulate insurance and undertaking by non-discriminatory legislation, there are no rights left to a state. We do not believe that such was the intended effect of the Fourteenth Amendment.

IV

The Court Will Not Consider Constitutional Questions Not Required by the Record.

It is to be noted that the District Court's opinion, pointing to the absence of a separability clause in the South

Carolina statute, concludes that if the Act is unconstitutional in any respect it is within the province of the District Court to declare it invalid in its entirety. (R. 139.)

This conclusion overlooks the fact that the only function of a court is to decide justiciable controversies. No matter how unconstitutional a statute may be a Court cannot strike it down until some litigant aggrieved by its unconstitutional provisions presents a case within the jurisdiction of a Court which requires a decision on the Constitutional issue: *Ashury Hosp. v. Cass*, 326 U.S. 207, 213; *Alabama v. McAdory*, 325 U.S. 450.

Here the Appellees Floyd, both undertakers, own a controlling interest in the Appellee, Family Life, an insurance company all of whose stockholders, directors and officers, save one, are undertakers. The majority of the Company's agents are morticians or their employees. Policies are written by morticians, premiums are paid to them at the funeral parlor, and benefits are paid through them. The sole issue is whether the statute prohibiting these business arrangements deprives these Appellees of due process or equal protection.

We have no issue of whether an insurance officer could own a minority interest in a mortuary. We have no issue as to whether a part-time driver of a hearse might sell insurance. We believe the state can prohibit even these relationships. But if in a proper case a Court would say that the legislature could not forbid these things, it does not avail the Appellees who are not injured by these features of the Act.

CONCLUSION

The United States, a Government of limited powers, can require a public utility holding company to divest itself

of its operating companies, *American Power & Light Co. v. SEC*, 329 U. S. 90; *North American Co. v. SEC*, 327 U.S. 686; it can require a motion picture chain to divest itself of some of its theaters, *Schine Chain Theaters v. U. S.*, 92 L.Ed. Adv. 871, prohibit a railroad company from mining the coal it carries, *U. S. v. Delaware & Hudson*, 213 U.S. 366, or an investment banker from acting as broker, 15 USC Sec. 10. *A fortiori* South Carolina, with broad powers reserved to it by the Tenth Amendment, can order the dissolution of all ties between the business of insurance and that of undertaking where, as here, the legislation bears a reasonable relation to the public good.

The judgment should be reversed and the Complaint dismissed.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General,

T. C. CALLISON,

J. MONROE FULMER,
Assistant Attorneys General.

EDGAR A. BROWN,

NATHANIEL A. TURNER,

DAVID W. ROBINSON,

R. HOKE ROBINSON,
Columbia, S. C.,
Counsel for the Appellants.

December, 1948.

APPENDIX

INDEX TO APPENDIX

	PAGE
South Carolina Acts of 1948, Page 1947	33
Code of 1942, Section 7984	34
Acts of 1947, Page 350	35
South Carolina Constitution of 1895, Art. IX	36
Code of 1942, Section 7676	36

South Carolina Acts of 1948, page 1947:

No. 787

AN ACT Making It Unlawful For Any Life Insurance Company, Its Officers, Agents Or Employees To Own, Operate Or Maintain A Funeral Or Undertaking Business; Or Contract, Or Agree With Any Funeral Or Undertaking Establishment To Conduct The Funeral Of Any Person Insured By Such Insurance Company; Or For Any Funeral Or Undertaking Establishment, Its Agents, Officers, Or Employees To Be Licensed As Agent, Salesman Or Solicitor For Any Life Insurance Company Doing Business In This State.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Life insurance companies and their employees not Own or operate undertaking business.—It shall be unlawful for any life insurance company, corporation, or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, or to permit its officers, agents or employees to own, operate or maintain any such funeral or undertaking business.

SECTION 2: Life insurance company or sick or funeral benefit company not contract with undertaker conduct funeral of person insured by it.—It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

SECTION 3: Undertaker and his employees not act as agent for life insurance company.—It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.

SECTION 4: Penalties.—Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by fine not exceeding One Thousand ($1000.00) Dollars or by imprisonment at hard labor for not exceeding six (6) months, or both such fine and imprisonment within the discretion of the courts.

SECTION 5: Repeal.—All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SECTION 6: Time Effective.—This Act shall take effect upon its approval by the Governor.

Approved the 14 day of April, 1948.

Code of 1942, Section 7984:

§ 7984. **Penalties pay insurance in merchandise or services.**—It shall be unlawful for any insurance company, fraternal organization, burial association, or any other association to make payment or settlement of policies written by such companies or associations in merchandise or services rendered or agreed to be rendered, or to issue any policy, providing for settlement in merchandise or services rendered or to be rendered. Any insurance company, fraternal organization, burial association or any other association violating the provisions of this section shall be liable to a penalty of ten (10) times the amount of such policy, certificate or other evidence of insurance to be collected

in a suit by the heirs-at-law of such deceased policyholder. Any officers, agents or servants of any insurance company, fraternal organization, burial association, or any other association, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred ($100.00) Dollars nor more than one thousand ($1000.00) dollars, or suffer imprisonment on the county chaingang or in the state penitentiary for a period of not less than thirty (30) days nor more than one (1) year in the discretion of the Court.

(Acts 1929 (36) 234; 1940 (41) 1672; 1941 (42) 286).

Acts of 1947, page 350:

SECTION 65: Not to Pay Death Benefits in Services—not issue policy providing for settlement of benefits in merchandise or services—Penalty.—It shall be unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or services rendered or to be rendered. Any insurance company violating the provisions of this section shall be liable to a penalty of ten (10) times the amount of such policy, certificate or other evidence of insurance to be collected in a suit by the heirs-at-law of such deceased policyholder. Any officers, agents or servants of any insurance company violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand ($1,000.00) dollars, or suffer imprisonment on the county chaingang or in the state penitentiary for a period of not more than one (1) year in the discretion of the court.

South Carolina Constitution of 1895, Art. IX:

Section 2. Charter of incorporation.—No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporation as may be under the control of the State, or may be provided for in this Constitution, but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereinafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: *Provided*, That the General Assembly may by a two-thirds vote of each House on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

(See Const. 1868, IX; 9; XII, 1.)

* * *

Section 17. Laws for benefit of corporation passed only on conditions.—The General Assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to hold its charter and franchise under the provisions of this Article.

Code of 1942, Section 7676:

§ 7676. All charters subject to amendment or repeal.—It shall be deemed a part of the charter of every

corporation created under the provisions of any general law, and of every charter granted, renewed, or amended by act or joint resolution of the General Assembly (unless such act or joint resolution shall, in express terms, declare the contrary), that such charter, and every amendment and renewal thereof, shall always remain subject to amendment, alteration or repeal by the General Assembly.

(Acts 1886 (19) 546.)

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
JAN 31 1949

REPLY BRIEF FOR APPELLANTS

Supreme Court of the United States

No. 297 **297**

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

versus

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

JOHN M. DANIEL,
Attorney General of South Carolina,
T. C. CALLISON,
J. MONROE FULMER,
Assistant Attorneys General.

EDGAR A. BROWN,
Barnwell, S. C.,
NATHANIEL A. TURNER,
DAVID W. ROBINSON,
R. HOKE ROBINSON,
Columbia, S. C.,
Counsel for Appellants.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

INDEX

PAGE

I. Freedom of Contract and the Fourteenth Amendment 2

II. The Questioned Statute Aims at a Real Evil 3

III. The Constitutional Questions are unaffected by the Public Benefits Flowing from the Appellees' use of Favorable Mortuary Tables 5

IV. Recent Decisions on Due Process and Equal Protection 5

TABLE OF CITATIONS

	PAGE
Adams v. Tanner, 244 U. S. 590	2
Adamson v. California, 322 U. S. 46, 83	2
Borden v. Baldwin, 293 U. S. 194	2
Borden v. Ten Eyck, 297 U. S. 251	2
Central Lumber Co. v. South Dakota, 226 U. S. 157	4
Goesaert v. Cleary, 93 L. ed. 187, 189	5
Hammond Packing Co. v. Arkansas, 212 U. S. 322	3
International Harvester Co. v. Missouri, 234 U. S. 199	4
Jay Burns Baking Co. v. Bryan, 264 U. S. 504	2
LaTourette v. McMaster, 248 U. S. 465	4
Liggett v. Baldridge, 278 U. S. 105	2
Nebbia v. New York, 291 U. S. 503, 538	4
Olsen v. Nebraska, 313 U. S. 236, 85 L. ed. 1305, 61 S. Ct. 862, 133 ALR 1300	2
People v. Gillson, 17 N. E. 343	2
Smith v. Texas, 233 U. S. 630	2
Tigner v. Texas, 310 U. S. 141	3
United States v. Carolene, 304 U. S. 104, 154-2	2
Wafers-Pierce Oil Co. v. Texas, 197 U. S. 115	4
Watson v. Buck, 313 U. S. 387	3
Whitaker v. North Carolina, 93 L. ed. 201, 207	2, 6
Winters v. New York, 92 L. Ed. 656, 669	2

Supreme Court of the United States

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

versus

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

The Appellees argue that the statute in issue deprives them of due process and equal protection because:

(1) its prohibition against undertakers owning and controlling life insurance companies and selling insurance arbitrarily interferes with their freedom of contract;

(2) there was no evil for the legislation to correct;

(3) the great public benefits flowing from the use by the Family Security Life Insurance Company of mortuary tables, more favorable to the public than those in general use, require the Court to invalidate the legislation. (Brief 20-21.)

I

FREEDOM OF CONTRACT AND THE FOURTEENTH AMENDMENT

The claim that a Legislature may not limit the freedom of individuals and corporations to contract has been rejected time after time by this Court. Here we are dealing with insurance and undertaking, both of which are peculiarly subject to public control. (Appellants' Brief 11-27.)

The authorities cited by the Court below (R. 138, 139, 143) and in Appellees' brief, as supporting a contrary view, are questionable precedents today.*

United States v. Carolene, 304 U. S. 104, 151-2, dealinging with the applicability of the Fifth Amendment and *Borden v. Baldwin*, 293 U. S. 194 construed in the light of the second opinion, *Borden v. Ten Eyck*, 297 U. S. 251 lend support to the constitutionality of the South Carolina statute here.

Smith v. Texas, 233 U. S. 630 and *People v. Gillson*, 17 N. E. 343 deal with the contract clause, not now argued by the appellees.

---

*The decision in *Jay Burns Baking Co. v. Bryan*, 264 U. S. 504, was characterized as "an exercise of the powers of a super-legislature — not the performance of the constitutional function of judicial review" in Justice Brandeis' dissent. For doubt that his view prevails today, *Adamson v. California* (dissent) 332 U. S. 46, 83; *Winters v. New York* (dissent) 92 L. Ed. 656, 669.

Adams v. Tanner, 244 U. S. 590 has little vitality in the light of the holding in *Whitaker v. North Carolina*, 93 L. Ed. 201, 207. "Our holding and opinion in *Olsen v. Nebraska*, 312 U. S. 236, 85 L. Ed. 1305, 61 S. Ct. 862, 133 A. L. R. 1360, *supra*, clearly undermines *Adams v. Tanner*."

Our principal brief comments on *Liggett v. Baldridge*, 278 U. S. 105.

II

THE QUESTIONED STATUTE AIMS AT A REAL EVIL

Our principal brief (pp. 16-18) points to the State's policy prohibiting the payment of insurance in funeral services. The principal appellee, J. Gordon Floyd, was instrumental in perpetuating this policy in the 1947 Insurance Code. (Appellees Brief, p. 14.) The Appellees contend, however, that the State may not prohibit kindred burial insurance which is payable in cash through the undertaker. (Brief 20-21.)

The transcript of the hearing before the Banking and Insurance Committee of the South Carolina Senate (R. 82-133) shows clearly the evils that the Legislature was attempting to prevent by the enactment of the questioned statute.

This record shows that the appellees' funeral insurance plan would stifle competition. Such a result from the operation of a similar plan has been effected in a neighboring southern state. (R. 84, 87, 112.) Without the legislation undertakers would be forced to become agents of the insurance company or go out of business. (R. 85, 86, 93, 96, 122.) It would channel maturity benefits to certain undertakers. (R. 94, 99, 102, 103.)

In any community where a large percentage of the residents were covered by the type of "funeral insurance" sold by the appellee company, the competitive position of each funeral director would be practically frozen; free enterprise would be curtailed; centralized control of all funeral establishments in the state might be the result. This Court has many times upheld state anti-trust legislation against attacks under the 14th Amendment. *Tigner v. Texas*, 310 U. S. 141; *Watson v. Buck*, 313 U. S. 387; *Hammond*

Packing Co. v. Arkansas, 212 U. S. 322; *International Harvester Co. v. Missouri*, 234 U. S. 199; *Central Lumber Co. v. South Dakota*, 226 U. S. 157; *Waters-Pierce Oil Co. v. Texas*, 197 U. S. 115. *Cf.* the following statement in *Nebbia v. New York*, 291 U. S. 503, at 538:

> The law making bodies have in the past endeavored to promote free competition aimed at trusts and monopolies. The constant interference with private property and freedom of contract has not availed the courts to set these enactments aside as denying due process.

A second evil minimized by this legislation is the tendency of funeral insurance written through undertakers to place the insurance agent-undertaker in an inconsistent fiduciary capacity. As undertaker it is to his interest to spend the entire policy proceeds on the funeral, as insurance agent he should be free to advise the beneficiary to retain the proceeds or a major portion thereof for necessary family expenses. *La Tourette v. McMaster*, 248 U. S. 465. The inadequate commissions for collecting premiums tempt the undertaker-agent to obtain his real compensation in the funeral bill. (R. 88, 95, 97.)

Certainly it was proper for South Carolina to decide that it was a wise thing to separate funeral directing and life insurance. By doing so it insures the beneficiary of free choice of funeral directors, it discourages monopoly conditions, and it leaves the insurance agent free to give the beneficiary impartial advice.

III

THE CONSTITUTIONAL QUESTIONS ARE UNAFFECTED BY THE PUBLIC BENEFITS FLOWING FROM THE APPELLEES' USE OF FAVORABLE MORTUARY TABLES

The appellees present a somewhat curious argument (Brief 20) that the statute is invalid because it will adversely affect the Family Security Life Insurance Company, which is using mortuary tables more favorable to policyholders than those used by other companies. There are two complete answers to this position:

First, the argument is addressed exclusively to the wisdom of the legislation and hence to the Legislature of South Carolina.

Second, the Family Security Life Insurance Company is not prohibited from using these mortuary tables. The statute in question merely prohibits that company and all other companies from writing insurance **through the undertakers**. So far as this legislation is concerned the Appellee company is free to write on the basis of any mortuary table it selects.

IV

RECENT DECISIONS ON DUE PROCESS AND EQUAL PROTECTION

Recent decisions of this Court have continued the trend toward upholding state experimental legislation in the economic field. In *Goesaert v. Cleary*, 93 L. Ed. 187, 189, the Michigan law limiting bartender licenses to males and the wives and daughters of male owners, was upheld against due process and equal protection arguments.

The Court's hesitancy in striking state economic legislation as a violation of due process is indicated in the recent decisions upholding state anti-closed-shop statutes, *Whitaker v. North Carolina et al.*, 93 L. Ed. 201, 208, 217-219:

> This Court, beginning at least as early as 1934, when the *Nebbia case* was decided, has steadily rejected the due process philosophy enunciated in the *Adair-Coppage* line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. See *Nebbia v. United States*, *supra*, at 523-524, and *West Coast Hotel Co. v. Parrish*, *supra*, at 392-395, and cases cited. Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General,

T. C. CALLISON,

J. MONROE FULMER,
Assistant Attorneys General.

EDGAR A. BROWN,
NATHANIEL A. TURNER,
DAVID W. ROBINSON,
R. HOKE ROBINSON,
Columbia, S. C.,
Counsel for Appellants.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JAN 22 1949
CHARLES ELMORE

BRIEF AND APPENDIX FOR APPELLEES

Supreme Court of the United States

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

versus

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

C. ERSKINE DANIEL,
DONALD RUSSELL,
E. W. JOHNSON,
T. SAM MEANS, JR.
All of Spartanburg, S. C.
Attorneys for Appellees.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
The Statute Assailed	2
Questions Involved	3
Statutes Involved	4
Statement	9
Outline of Argument	19
Argument:	
I. Statute unconstitutional on face	22
II. Act invalid under the proof	30
III. Act invalid in light of other laws in pari materia	33
IV. Discussing Dissenting Opinon	34
Conclusion	38
Appendix	41

CITATIONS

Page

Cases:

Adams v. Tanner, 244 U. S. 590, 37 S. Ct. 662, 61 L. Ed. 1336 32

Allgeyer v. Louisiana, 165 U. S. 578, 17 S. Ct. 427, 41 L. Ed. 832 24

American Md. Assoc. v. U. S., 317 U. S. 519, 87 L. Ed. 434 38

Borden's Farm Products Co. v. Baldwin, 293 U. S. 194, 55 S. Ct. 187, 79 L. Ed. 281 23

Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251, 56 S. Ct. 453, 80 L. Ed. 699 22

Farrington v. Tokushige, 273 U. S. 284, 47 S. Ct. 406, 71 L. Ed. 646 22

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412, 57 S. Ct. 772, 81 L. Ed. 1193 22

Hauser v. North British, Etc., Insurance Co., 206 N. Y. 455, 100 N. E. 52, 42 L. R. A. (N.S.) 1130 24

Liggett and Co. v. Baldridge, 278 U. S. 105, 49 S. Ct. 57, 73 L. Ed. 204 31

Northwestern Nat. Ins. Co. v. Fishback, 130 Wash. 490, 228 Pac. 516, 36 A. L. R. 1507 28

People v. Gillson (N. Y.), 17 N. E. 343 27

Robinson v. Duke Power, 213 S. C. 185, 48 S. E. (2) 808 35

Sheldon v. Metro-Goldwyn, 309 U. S. 390, 60 S. Ct. 681, 84 L. Ed. 825 22

Smith v. Texas, 233 U. S. 630, 34 S. Ct. 681, 58 L. Ed. 1129, Ann. Cas. 1915-D 420, L. R. A. 1915-D 677 28

State v. Hammer (N. J.), 42 N. J. L. 440 23

Thompson v. Consolidated Gas, 300 U. S. 55, 57 S. Ct. 364, 81 L. Ed. 510 22

CITATIONS—Continued

U. S. v. Carolene Products Co., 304 U. S. 144, 58 S. Ct. 778, 82 L. Ed. 1234

U. S. vs. Knott, 298 U. S. 544, 56 S. Ct. 902, 80 L. Ed. 1321

Textbooks:

20 Am. Jur., Evidence, Secs. 170, 173

20 Am. Jur., Evidence, Sec. 226, page 221

20 Am. Jur., Evidence, Sec. 229

31 Corpus Juris Secundum Evidence, Sec. 134, page 769

Statutes:

South Carolina Code of 1942, Sec. 7984

South Carolina Constitution, Art. IX, Sec. 2

36 South Carolina Stat. (1929), 234

45 South Carolina Stat. (1947), 322-473

45 South Carolina Stat. (1947), 350

45 South Carolina Stat. (1947), 463

45 South Carolina Stat. (1947), 787

28 U. S. C. A. 380, Sec. 266, Judicial Code (New 28 U. S. C. A. 1253, 2284)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 297

JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF SOUTH CAROLINA, AND B. B. BROCKMAN, AS SHERIFF OF SPARTANBURG COUNTY, APPELLANTS,

versus

FAMILY SECURITY LIFE INSURANCE COMPANY, J. GORDON FLOYD, W. RUSSELL FLOYD AND WILLIAM E. LANFORD, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

This appeal is from the judgment of a three-judge District Court for the Eastern District of South Carolina, permanently enjoining the Attorney General and the Insurance Commissioner of that State and the Sheriff of one of its Counties (and, by representation, their subordinates) from enforcing the provisions of Act. No. 787 of the South Carolina General Assembly of 1948 (45 Stat. 1947), which is set out in full in Appendix A to the majority opinion below.

OPINIONS BELOW

The opinions below are reported in 79 F. Supp. 62. We call attention to the fact that the majority opinion is by

the District Judges of the Western District of South Carolina, and the Eastern and Western Districts.

JURISDICTION

Federal Jurisdiction was invoked by the appellees, and the judgment appealed from is that of a three-Judge District Court, convened under 28 U.S.C.A. 380 and Section 266 of the Judicial Code. (New U. S. 28, 1253 and 2284), invalidating the Act assailed as offending the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

THE STATUTE ASSAILED

Since Appellants' statement of the "*question presented*" describes a statute and attributes an effect widely variant from the features and effect of the statute assailed, we reproduce it here, with the portions we complained of italicised, in aid of an early and clear emergence of the questions involved, as we contend.

"Section 1. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this State to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, *or to permit its officers, agents, or employees to own, operate or maintain any such funeral or undertaking business.*

Section 2. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director, undertaker or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

Section 3. *It shall be unlawful for any funeral director, undertaker, or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this State.*

Section 4. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon conviction shall be punished by fine not exceeding One Thousand ($1,000.00) Dollars or by imprisonment at hard labor for not exceeding six (6) months, or both, such fine and imprisonment within the discretion of the Courts."

The prohibitions complained of are:

1. It denies to any undertaker the right to be an officer, agent, or employee of *any* life insurance company.

2. It denies to *all* agents or employees of an undertaker the right to be licensed to sell life insurance, without reference to his qualifications.

QUESTIONS INVOLVED

Does this statute offend the due process and equal protection clauses of the 14th Amendment of the Federal Constitution:

(a) Because it employs descriptions which limit and direct its effect with premeditated precision to the destruction of the plaintiff Life Insurance Co., with no reasonable relationship between the destruction intended to be accomplished and any public evil to be prevented.

(b) Because it denies that Company the right enjoyed by all other corporations to select its officers on consideration of business success, experience, public standing, executive ability, etc., with no reasonable relationship between the prohibitions inflicted and any public evil to be prevented.

(c) Because it denies to undertakers and *all* their agents or *employees* the right to be life insurance agents, notwithstanding they have been adjudged by the proper State Authority, after prescribed examination, fit, competent and trustworthy to be such and duly licensed and re-licensed as such, with no discernible relationship between the mass disqualification and any evil to be remedied;

(d) Because, under the undisputed, full and clear factual proof in this record of the social and economic benefits accruing to the low-income and wage-earning classes from the policies, rates and surrender and extended insurance values, and its method of doing business, and the equally full, clear and undisputed proof that its policies and plan supply a longstanding legitimate and widespread public need and demand not met by competing companies, is not its proscription the prevention of a public benefit to those classes who most need it;

(e) Because, in view of the recently enacted "Insurance Code of South Carolina" and the completeness with which it covers the insurance business in all its aspects, and the plenary power and mandatory duty conferred upon and vested in the Insurance Commissioner to correct and prevent abuses and all unfair methods or deceptive acts and practices and to revoke or suspend company licenses and the licenses of agents, it is not a reasonable regulation, but a forbidden proscription of the company, undertakers and agents and employees of undertakers.

STATUTES INVOLVED

In addition to the statute under attack, the following South Carolina Statutes bear on the case:

1. An Act adopted in 1929 (36 Stat., 234) forbidding insurance companies to pay or settle policies in merchandise or services rendered or agreed to be rendered, or to issue any policy so providing, which is carried forward in

the South Carolina Codes of 1932 and 1942 as Section 7984, and as Section 65 of Article 1 of South Carolina's new Insurance Code of 1947 (45 Stat. 350).

2. The following sections of South Carolina's 1947 Insurance Code (45 Stat. 322-473), stated in substance:

Section 4, Article 1, Establishing the Insurance Department and charging it with the enforcement of all insurance laws.

Section 5, Making the Insurance Commissioner chief officer of the Department.

Sections 7, 8, and 9, Providing for a Deputy Commissioner, Chief Actuary, and "other deputies, actuaries, examiners, clerks, and other employees as may be found necessary for the work of the Department."

Section 11, Requiring the Insurance Commissioner to license all insurance companies and collect the license fees.

Section 12, Prescribing the powers and duties of the Commissioner as follows: (1) to see that all laws governing insurance companies are faithfully executed, and "to that end, he shall have power and authority to make rules and regulations . . . to enforce, carry out, and make effective the provisions of this Chapter"; (2) furnish blanks for statements required to be reported to him, "which may be changed by him from time to time when necessary to secure full information as to the standing, condition, and such other information desired of said Companies"; (3) institute and prosecute criminal violations of insurance laws, and report any such violations to the Attorney General.

Section 13, Providing: "It shall be unlawful for the Secretary of State to *issue any charter to any Insurance company of whatever kind*, or permit any foreign insurance company to do business within this State *without the written approval of the Commissioner.*" (See Appendix).

Sections 16, 17, 18, and 19, Providing for the examination of companies, prescribing the notices to be given, make orders and decisions, and providing for Court review of such, conferring upon the Commissioner and his Deputies and Assistant Deputies the power to summons and compel the attendance of witnesses, and giving the Commissioner "the power of a Circuit Judge to punish for contempt any witness failing to answer any summons, or failing or refusing to testify when so required," and the power to enter premises.

Section 24, Making the Commissioner's certificate admissible evidence that any insurance company or any agent has been licensed by the Department.

Section 25 provides, *inter alia*, ". . . the Commissioner shall, from time to time, report to the General Assembly any change which in his opinion should be made in the laws relating to insurance."

Section 26, Providing: "Every Insurance Company doing business in this State shall be licensed and supervised by the Commissioner."

Section 28, Requiring that the Commissioner shall be satisfied by examination and evidence that any Company applying for a license is duly qualified under South Carolina law, and to examine the affairs of every domestic insurance company thoroughly at least as often as once in three years, "especially as to its financial condition, and whether it has complied with the laws."

Section 31, Requiring the filing by the President of any insurance company of an oath that the company has not violated any of the laws within the past twelve months and it accepts the obligations of the Insurance Law before the Commissioner may license it.

Section 33, Requiring the Commissioner before granting a license, to determine that the Company's reserves are adequate for the protection of policyholders, and "in

case of a company organized under the laws of this State, the Commissioner shall determine that the reserve basis to be used by such Company will be adequate."

Section 38, Requiring every Insurance Company to file before March 1st each year a statement, under oath, showing the business standing and financial condition of the Company on December 31st preceding.

Section 42, Providing a penalty for a false statement in any annual or other statement of any insurance company.

Section 65, Forbidding settlement or payment of death benefits in merchandise or services. (See our Appendix.)

Section 69, Empowering the Commissioner to revoke the license of any company if in his opinion, it is in an unsound condition, or has failed to comply with the law or its Charter. (See Appendix.)

Section 86, Penalizing the failure of an insurance agent to exhibit his license on demand of any whom he may solicit for insurance.

Section 101, Making it unlawful for any insurance company to issue or sell any policy, contract, or certificate "*until the forms of the same have been filed with and approved by the Commissioner.*"

Section 107, Requiring each applicant for an agent's license to stand an examination as prescribed by the Commissioner to develop his qualifications, knowledge of insurance laws of this State, his experience, whether he ever had a license suspended or revoked or refused, whether he has ever been in default on indebtedness to any insurance company, or ever had an agency contract cancelled, and a complete history of the applicant's employment for three years preceding the date of application, and that "*before issuing such license, the Commissioner shall determine from the examination that the applicant for an agent's license is a competent and trust-*

worthy person to engage in the classification of insurance business he intends to engage in. The Commissioner shall have power to revoke said license after ten days' notice, or refuse to re-issue said license when it shall appear that an agent has violated the laws of this State, or has wilfully deceived or dealt unjustly with the citizens of this State." (See Appendix.)

Article 2 deals with fire insurance companies; Article 3 with fraternal benefit associations; Article 4 with reciprocal insurance; Article 5 with domestic mutual insurance; Article 6 with Mutual Benevolent Aid Societies; Article 7 with non-profit hospital service plan; Article 8 with Sureties and Surety Companies; Article 9 with Health and Accident Insurance; Article 10 with Marine insurance; Article 11 with Casualty and Surety rates.)

Article 12 (45 Stat. 463) is captioned: "Unfair Methods of Competition, and Unfair and Deceptive Acts and Practices in the Business of Insurance." Section 1 declares the purpose, Section 2 gives definitions, Section 3 forbids unfair methods of competition, and Section 4 defines what are deemed unfair methods of competition, and unfair and deceptive acts or practices. (See Appendix.)

Sections 5, 6, and 7, of Article 12 empower the Commissioner to examine and investigate every person engaged in insurance to determine whether he has been or is engaged in such unfair methods or practices; to serve charges upon such as he has reason to believe are or have been so engaged with a notice of the time and place fixed for a hearing to receive evidence, subpoena witnesses, require production of documents, make a stenographic record of the proceedings, issue cease and desist orders where any such method or practice has been found.

Section 8 provides for judicial review, and that to the extent the Commissioner's order is affirmed, the Court shall issue its order commanding obedience.

Section 9 prescribes procedure when the Commissioner has reason to believe there is any method of competition or any act or practice in the insurance business which is unfair or deceptive, other than those defined in Section 4.

Section 2 of Article IX of the South Carolina Constitution provides: "No Charter of Incorporation shall be granted, changed or amended by special law . . ., but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporation hereafter to be created . . . all charters now existing or hereafter created, shall be subject to future repeal or alteration."

STATEMENT

This action was brought in the United States District Court for the Eastern District of South Carolina by the Family Security Life Insurance Company, a legal reserve life insurance company created by the law of South Carolina and licensed by its Insurance Department to engage in the life insurance business, and J. Gordon Floyd, W. Russell Floyd, and William P. Lanford, as agents of that Company, in behalf of themselves and all other duly licensed agents of the company who were directly or indirectly connected with, or interested in the undertaking business, to enjoin the enforcement of the Act hereinabove set forth. The two Floyds and Lanford are directors of the Company, and J. Gordon Floyd is its President.

W. Russell Floyd and J. Gordon Floyd own in equal shares the entire capital stock of the J. F. Floyd Mortuary, Inc., an undertaking establishment which has been conducted in Spartanburg for the past 62 years by the Floyd family. It owns $26,000.00 of the capital and surplus of Family Security Life Insurance Co.

J. Gordon Floyd and W. P. Lanford are agents of the Family Security Life Insurance Company, duly licensed by the Insurance Commissioner, and Lanford is an own-

ing partner in the Lanford-Boyter Mortuary in Woodruff, Spartanburg County, S. C. Before becoming an agent of the plaintiff company, he was, in April, 1947, licensed as an agent for the Equitable Life Assurance Society of the United States, and, in July, 1947, as agent to write health, accident and hospital insurance providing death benefits in cases of accidental death, for the North American Assurance Society of Virginia, *and devoting only part time to writing insurance, realized substantial commissions augmenting his income from the mortuary business.* (R. 63, 64.)

At the commencement of this action, the plaintiff insurance company had 34 stockholders, all but one being interested in the undertaking business. It had 79 agents licensed by the Insurance Commissioner, and re-licensed as of April 1, 1948, 51 of whom were connected with the undertaking business as owner, agent or employee. (R. 15, 16.) It has an authorized capital of $50,000.00, a subscribed capital of $25,000.00, paid-in capital of $16,000.00, and paid-in surplus of $64,000.00. (R. 15.) Three of its five directors and a majority of its younger agents are veterans of World War II. (R. 72, 73.)

About 1940, J. Gordon Floyd began to study writing legal reserve life insurance through funeral directors and mortuaries. Being convinced from this study that there was a public need and demand for insurance so written, and that it was sound from the standpoint of the public and the undertakers he acquired the plaintiff company in 1941. When World War II began, he volunteered as a private and remained in service for approximately four years, during which his plan was dormant. Upon his discharge, he renewed his study and interested other undertakers in the plan. (R. 11.)

Though annually re-licensed since 1941, its expansion did not begin until after Mr. Floyd's discharge from the military service. (R. 11.)

Its 33 stockholders who are interested in undertaking establishments are located in 17 different counties of South Carolina, and in 25 different cities and towns. (R. 68, 69.)

Seeking the further expansion of the Family Security Life Insurance Company, J. Gordon Floyd, past President of the South Carolina Association of Funeral Directors (about 130 in number), knowing them all, went to call on practically all of them with Mr. Honig, the Vice-President, and offered to each and all the right to become stockholders in and agents for the Company, taking as little stock as they desired at Five Dollars per share, nothing being added to the cost on account of expenditures in developing the plan, or because of prospective earnings. (R. 66.)

The by-laws of the Company provide: (R. 66, 67):

Section 1. Objectives. *The objectives of the company are those of providing the people of South Carolina with a sound, economical, attractive plan and method for prepaying funeral expenses, through the mechanics of life insurance, and providing a permanent protection against the operation of burial rackets in the State of South Carolina.*

Section 2. Method of Operation. The company shall offer its insurance through South Carolina Funeral Homes and Funeral Directors who own stock in the company and serve as its exclusive agencies and principal agents, respectively.

Section 3. Payments in Cash. All policies offered by the Company shall be on a life insurance basis with legal reserves and non-forfeiture values approved by the South Carolina Insurance Commissioner, and claims paid on the company's policies of insurance shall be made in cash and shall permit the payee complete freedom of choice in selection of funeral home and in selection of type and cost of merchandise and services.

Section 4. Restriction on Activities. The company at no time will enter the funeral business, nor will it, at any time or under any circumstances, own or lend money on stock, real estate, equipment, paraphernalia, rolling stock, merchandise or any other assets owned or used by any funeral home in the conduct of its funeral business.

Section 5. Restriction on Stock Ownership. No one funeral home may own more than forty-nine per cent of the company's outstanding stock.

Before soliciting other undertakers to take stock and agencies, Mr. Floyd was thoroughly convinced of the soundness of the plan, and the public need and demand, not through his own study and investigation alone, but from the report of Mr. Honig whom he had employed to study the plan and investigate its workings in other States, who, after more than eight months in such observation and study of similar plans in other States (*in 25 of which life insurance was being written by funeral directors*), (R. 11, 51, 55), reported that companies similar to the Family Security Life Insurance Company which had met (as it does) the requirements of industrial insurance companies, supplied a widely prevalent public need and public demand among the low income and wage-earning groups because: (a) The public regard their local funeral director as more permanent and dependable than the average industrial insurance company, which they know only through the weekly visits of the debit collector, who is constantly being changed, and because of the very high "lapse ratio common to weekly industrial life insurance. (*During 1946 South Carolina industrial life insurance companies issued $201 million dollars in new insurance, and lapsed $126 million dollars*)." (R. 55); (b) funeral homes are usually among the oldest and longest established businesses in a community, and have earned the confidence of these classes, (R. 56), who think it logical to insure against burial ex-

penses with their funeral director; (c) this effort to prepay burial expenses is manifested by the insistence of many of the poorer people on depositing burial expense money with their undertaker. This operates to their disadvantage because the undertaker is not equipped to invest the deposits, whereas, the mechanics of industrial insurance meets the need at materially lesser expense. (R. 56); (d) people of substantial means carrying large insurance frequently take out a smaller policy through the funeral director earmarked for funeral expenses, to guard against overspending under the stress of recent bereavement. (R. 56.)

In October, 1947, an actuary was employed to develop policy contracts, non-forfeiture values and premium rates. (R. 57.) Submission of the contracts for the approval of the Insurance Commissioner was delayed pending his decision whether or not he would require the inclusion of the recommendations of the Guertin Reports in all industrial life policies. (R. 57-58); but no decision being made, notwithstanding the absence of any requirement of South Carolina law or any regulation of the Insurance Department, the Family Security Life Insurance Company adopted those features of the Guertin Recommendations which are most to the advantage of the policyholder with the result that it is compelled to maintain larger reserves, and to pay greater surrender values than competing industrial life companies. (R. 58.)

The Insurance Commissioner and his Chief Actuary, after full discussion, on December 4, 1947, approved the plan and methods of Family Security Life Insurance Company, saying that it was the most practical solution to the problem created by the writing of burial insurance by North Carolina Associations "over the line,"—an abuse that he could not prevent because it would always be claimed that the policy was written in North Carolina, and that a South Carolina Company like Family Security,

owned and operated by South Carolina undertakers was the answer (R. 58, also 49-50). He then licensed 41 funeral directors or employees of funeral directors as agents and re-licensed them with 17 others for the fiscal year ending March 31, 1949. (R. 58.)

The Chief Actuary of the Department questioned the proposal of the Family Security Life Insurance Company to issue policies insuring through age 74, explaining that competing companies did not insure above age 65, and "*should your company issue at advanced ages, I am very sure that competing companies will feel that they should also offer the same protection*" (R. 15-59). He yielded to the Company's argument that mortality tables are available to age 103 and a Georgia Company insured to age 90, and its experience was satisfactory. (R. 59.)

In February, 1948, the Insurance Department approved the policy, surrender values, extended insurance, nonforfeiture value, guaranteed interest rate, mortality tables, and reserve valuation method of the Company. (R. 59.)

This was after the challenged statute was introduced in the South Carolina House of Representatives on February 3, 1948. (R. 45.)

The Family Security Life Insurance Company is the only South Carolina Company writing industrial insurance to age 74. (R. 15-59.)

When the new Insurance Code of 1947 was under consideration by the General Assembly in 1945, J. Gordon Floyd was instrumental in obtaining the retention of the prohibition against paying policies in merchandise or services, and its incorporation as Section 65 of the Insurance Code. (R. 46.)

The Family Security Life Insurance Company is the only South Carolina industrial life insurance company adopting the recommendations of the Guertin Committee

of the National Insurance Commissioners' Association favoring the policy holders as follows: (R. 14):

(a) It employs the 1941 Standard Industrial Mortality Table, the most recent available, and which reflects mortality gains resulting from improved living conditions and medical science and discoveries, in lieu of the "American Experience Mortality Table," unrevised since 1870, and used by all other South Carolina industrial life insurance companies (R. 149, 153; also Guertin Reports, page 9). The later mortality table was adopted by a committee appointed by the National Association of Insurance Commissioners, and composed of the Actuaries of the Insurance Departments of five different states, and one each from the Actuarial Society of America, and the American Institute of Actuaries, to correct and remedy what the President of the Association, in appointing the Committee, described as "*the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality*". (R. 153, and the Guertin Reports, page 9).

(b) The Commissioners' valuation method for determining policyholders' reserves, and non-forfeiture values. (R. 14), which, according to the report "was deemed in the public interest because of its encouragement to strengthening of reserve bases in accordance with modern tables of mortality, lower rates of interest, and more conservative methods of calculation." (R. 153.)

(c) An assumed interest rate within the Company's earning capacity based on current market and investment conditions. (R. 14.)

The Family Security Life Insurance Company meets a wide-spread public need and public demand. No more conclusive demonstration of this statement could be made than that reflected by the tabulation of business volume growth found in the Stipulation on page 45 of the Record.

On February 3, 1948, when the Act intended to destroy it was introduced, there were only two policies with insurance in the aggregate amount of $500.00. On March

27, 1948, there were 481 policies with $156,750.00 of insurance, and on May 8, 1948, (ten days before the trial below), there were 2,824 policies with $838,375.00 of insurance in force.

And this growth was achieved in the face of the legislation intended to destroy the Company, and the radio and newspaper publicity given to this lawsuit, as well as the misrepresentations of agents of competing companies. (R. 64, 65.)

At the time of the trial below, only two policies issued by the Family Security Life Insurance Company had matured in death claims. Both were written by undertaker-agents. In one case the undertaker-agent who wrote the policy was chosen to bury the insured. In the other case an undertaker competing with the undertaker-agent who wrote the policy got the funeral. (R. 43.)

The Family Security Life Insurance Company is chartered and licensed to write only "Industrial Life Insurance," which signifies in insurance terminology policies of $1,000.00 or less with premiums payable weekly, bi-weekly or monthly, which are most often collected by debit walkers calling at the homes of the policyholders. (page 95, Guertin Reports). The maximum policy it can write under the contracts approved by the Insurance Department is $750.00, and at the time of trial, the average policy was $299.00. (R. 60.) The published statistics of the National Funeral Directors Association show $365.00 as the average cost of a funeral. (R. 57.) According to the survey of Funeral Service of Chicago, 85% of the people have life insurance while living, and only one out of six have it when they die. (R. 57.)

The policies of Family Security Life Insurance Company are substantially identical with the industrial policies of other companies, except for the favorable features to policyholders adopted from the Guertin Reports, and that no debit collectors are employed, but the premiums

are payable monthly and may be remitted to the agency by mail, or paid in cash at the office of the agency through which the policy is written. (See exhibits 18-A—18-D.) Its premium rates, cash surrender, and extended insurance values are more favorable to the policyholders than the policies of other industrial companies, and it has higher reserves. (R. 14.) Its policies are payable to a designated beneficiary having an insurable interest by relationship. Its policy jackets carry the name of the undertaker agency through which the policy is written, and through which the premiums are to be paid. (R. 37.)

Mr. Albert Orgain, President of the South Carolina Life Underwriters Association, who had written letters and made addresses urging life insurance agents throughout the State to pressure their legislative representatives to enact the Statute assailed, (R. 75 and 76), said at the hearing before the Senate Committee:

> "Gentlemen, the life insurance company men of South Carolina are 100% against the manner in which this Company (Family Security) proposes to write and service life insurance. I will tell you again, as I have told them over there, and as I have admitted before every group that I have spoken to that they have a life insurance company that is organized under the State law, and it *has met every law that is on the books, and they are running on the Commissioner's standard of arriving at rates.*" (R. 128 and 129.)

The Facility of Payment Clause in the policies of Family Security is the same as that employed in policies written by competing Industrial Life Insurance Companies, and follows the "Commissioners' Proposed Industrial Standard Policy Provisions Law" as found on page 277 of McGraw-Hill's "Industrial Life Insurance" which is an authority in the insurance field. "Facility of Payment" clauses are common to all industrial life policies. It may be doubted that the Insurance Commissioner would ap-

prove a policy without it; because of the saving in delay and expense accomplished by it, at a time when (if we may quote a striking commentary) *"every penny has to be counted, lest some that will later be required for food be spent for unnecessary things, with a still unsettled balance at the grocers for food during the last shut down of the mill, and with rumors of dull times and another shutdown coming."*

Those fighting the Family Security Life Insurance Company and its methods admit that it *"is a legal reserve life insurance company meeting all of the laws,"* and that the only objection they have is the method of writing through undertakers and employees of undertakers. (R. 70, and 128 and 129.).

(Mr. Orgain, President of South Carolina Life Underwriters, said before the Senate Committee (R. 128):

> "I am the man that made a speech in Union . . . I said this (the Statute assailed) would affect approximately 4,200 life insurance men in the State of South Carolina . . . and I have made some 12 or 14 addresses over this State in the last three or four weeks. The life insurance men of the United States and South Carolina and every community . . . organized themselves together in a professional organization . . . as closely allied, as closely akin to the American Medical Association or the American Bar Association as we can possibly get," and further (R. 129) that he had served his company in Alabama and Louisiana, and "these gentlemen (Floyd and Honig) are not proposing to do business as has been done in those two states, because they have put in a clause in their policy which says 'we will pay in cash' ", and that (R. 131) he had never heard of any abuse, cheating or defrauding, or other complaint of any policyholder under the operation of this Company's plan.

When Mr. McDougald was asked to take stock and become an agent, his objection was that the plan would pre-

vent his selling funerals "*at as high a price range as he was presently obtaining.*" (R. 67.) Mr. Wood declined because "*it would permit a newcomer in the undertaking business to write a sufficient number of policies to enable him to stay in business.*" (R. 67.) Mr. Wolfe said that if the law permitted undertakers to write insurance, his establishment would write it, (R. 68), and published an advertisement to that effect, indicating that he would use another company. (R. 74-A.)

The case was tried on the merits, (R. 78, 79, 80), on the pleadings, affidavits and exhibits, with ten days leave to file supplementary material. (R. 81.)

The trial Court made detailed and analytical findings of fact, based on undisputed evidence, uncriticized by the dissenting Judge, and which we cannot match for accuracy, comprehensiveness, compactness, and clarity.

OUTLINE OF ARGUMENT

In urging our contentions on the Court, we concede at once (1) that the insurance business is affected with a public interest, and is subject to reasonable state regulation; (2) that there is a presumption in favor of the validity of a State Statute, and (3) that motives influencing a legislative body or its individual members will not be inquired into as bearing on the legality or validity of the questioned enactment, even though it be indisputably proved that the act was pressured through by a lobby, to serve a special interest.

We shall nevertheless contend that an act, by its language, and by its necessary and limited effect may, on its face, overthrow a presumption of validity, especially where it interferes with lawful business, lawful occupations, and the right of individuals to pursue a lawful calling in a lawful manner, and that this act is on its face invalid as offending the equal protection and due process clauses.

Especially does its arbitrary and oppressive invalidity appear when the descriptive terms employed to limit and direct its effect are considered in their relation to existing laws and measures in *pari materia* (and the comprehensive revision in 1947 of the South Carolina Insurance Law, enacted by the General Assembly identical in personnel with that which passed the act under attack in 1948), and in the light of conditions existing when the 1947 Insurance Code was adopted when the legislative mind was directed over a period of more than two years prior to covering the insurance field.

We will contend that the act is *prima facie* invalid because it disables undertakers and all their agents or employees to sell life insurance, notwithstanding the insurance Department had licensed 51 undertakers or their employees or agents as life insurance agents after making the required examination of each and determining therefrom that they were fit, competent and trustworthy to write the class of insurance indicated in their applications, and that they were re-licensed for the fiscal year beginning April 1, 1948, while the assailed act was under hearing before the legislative committees.

If invalidity does not emerge upon the face of the act, we nevertheless contend that it is invalid because of the undisputed, full, and clear proof of the great benefits to the low income and wage-earning classes afforded by the more favorable mortality tables used, the lower premium rates charged, the greater reserves, the greater surrender and extended insurance values, and the Commissioner's method of computing interest which features the policies and contract of the Family Security Life Insurance Company, and which they can obtain from no other company created under South Carolina law, and the Act, without reason, denies them benefit to them and rebukes the public need and demand supplied by this Company alone.

Further, if it is not invalid on its face, or invalid because of the undisputed and full showing of public benefit and the total absence of any testimony supporting a reasonable inference of any evil to be remedied, does it not stand undisguised as an arbitrary and unwarranted proscription of an honorable class and a particular Company when matched against the South Carolina Insurance Code of 1947, and especially its section 65 which was retained at the instance of the President of this Company, and the other minute and detailed provisions to insure against all imaginable abuses, unfair methods, and deceptions?

Notwithstanding the unconcern of this Court as to motivation of the legislature or its members, nevertheless, the hearings before the Senate Committee are pertinent and admissible, not because they show that the Act was pressured by competing insurance companies, but because of the total absence of any hint or suggestion of any evil that the Act might prevent, and the fact that the Insurance Commissioner was not called in and no Actuary was questioned.

We shall contend, as against the argument of the appellants, that they did not produce the best available evidence in support of their nebulous contentions, but relied on hearsay, failed to call the Insurance Commissioner (who had approved our policies and licensed our agents while the Act was pending in the Legislature). They failed to present any insurance man to furnish a reason for the Act. We have approval of the Insurance Commissioner and his Actuary, and furnish the affidavit of an actuary who is the actuary for a company whose attorney appeared before the Senate Committee on Banking and Insurance. (R. 98.)

We will contend the dissenting opinion reached the conclusion of an existing evil by invoking two inadmissible presumptions, or inverting the permissible presumptions, (1) that it is always presumed that persons intend to com-

ply with the law, and will not commit a criminal act, and (2) that public officers (the Insurance Commissioner and his corps of Deputies, Examiners and Agents) will perform their duties; and that the theory of the argument of the appellants sins against the legitimate presumption that the law will be obeyed and that public officers will do their duty.

The Trial Court's findings of fact are adequately supported by ample and undisputed evidence. The testimony develops no dispute as to any material matter of fact, and the only conflict is in matters of opinion.

These findings will not be disturbed (Rule 53 of Rules of Civil Procedure); *U. S. v. Knott*, 298 U. S. 544; 56 S. Ct. 902; 80 L. Ed. 1321; *Sheldon v. Metro-Goldwyn*, 309 U. S. 390; 60 S. Ct. 681; 84 L. Ed. 825; *Borden's Farm Products v. Ten Eyck*, 297 U. S. 251; 56 S. Ct. 453; 80 L. Ed. 699; *Great Atl., etc. Tea Co. v. Grosjean*, 301 U. S. 412; 57 S. Ct. 772; 81 L. Ed. 1193).

The majority opinion below is by District Judges who are citizens of South Carolina. There is no South Carolina decision construing the Statute assailed. Their construction will be accepted by this Court. *Thompson v. Consolidated Gas*, 300 U. S. 55, 57 S. Ct. 364; 81 L. Ed. 510.

There is no separability clause and the Act was defended as a whole in the Trial Court, and this Court looks to the Trial Court for the original examination of the local question. *Farrington v. Tokushige*, 273 U. S. 284; 47 S. Ct. 406; 71 L. Ed. 646.

ARGUMENT

I.

The Statute is unconstitutional on its face.

"The principle that the State has a broad discretion in classification in the exercise of its power of regulation is constantly recognized by this Court. Still, the Statute

may show on its face that the classification is arbitrary." *Borden Farm Products v. Baldwin*, 293 U. S. 194; 55 S. Ct. 187; 79 L. Ed. 281.

The classification is accomplished by the careful employment of descriptive terms designed, by inclusion and exclusion, to limit and direct its effect solely to the destruction of the Family Security Life Insurance Co.; protect its competitors from that competition; and to disable undertakers and their agents and employees to write life insurance, notwithstanding they have been duly licensed by the Insurance Commissioner, after a mandatory examination and the filing of sworn prescribed forms disclosing their qualification, and after being adjudged "competent and trustworthy" to engage in the branch of insurance business indicated by their application.

"The true principle (of classification) requires more than a mere designation that will serve to identify, for the characteristics which must serve as the basis of classification, must be of such a nature as to mark the object so designated as peculiarly requiring exclusive legislation." *State v. Hammer*, 42 N. J. L. 440.

Equality in right, privileges, burdens and protection is the cardinal thread of intent running through the Constitution, and an Act which intentionally and necessarily creates inequality, based on no reason arising from difference in condition or circumstances is contrary to the Constitution. The Act here transgresses every requirement for permissible classification with complete thoroughness. It imposes disabilities on undertakers and their agents and employees because they pursue a lawful cause in a lawful manner, and are "competent and trustworthy to write life insurance." It does not affect a class of insurance companies, but selects the Family Security Life Insurance Co. for annihilation.

The Act discloses no reasonable basis for the discriminating classification in any way relating to any evil. On

the contrary, its language proclaims its purpose to protect other insurance companies against the competition of the Family Security Life Insurance Co., which is selling policies to the working classes in all respects more favorable than the policies the protected companies are willing to sell. *It prevents no evil. It denies to the working classes a benefit* so plain and material as to provoke the competing insurance companies to run whining to the Legislature.

In *Allgeyer v. Louisiana*, 165 U. S. 578 (589), 17 S. Ct. 427, 41 L. Ed. 832, the Court said:

"The Liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to successful conclusion the purposes above mentioned. It was said by Mr. Justice Bradley, in *Butchers' Union Company v. Crescent City Company*, 111 U. S. 746 (762), in the course of his concurring opinion in that case 'the right to follow any of the common occupations of life is an inalienable right'."

In *Hauser v. North British, etc. Insurance Company*, 206 N. Y. 455, 100 N. E. 52, 42 L. R. A. (N.S.) 1130, a New York Statute required that insurance could not be written except by an agent devoting his full time to the insurance business, or persons engaged in the real estate business. Hauser was a lawyer, and wrote two policies of insurance. The Insurance Company refused to pay his commissions, invoking the provisions of the State as the basis of refusing to pay. The Supreme Court of New

York field the Statute unconstitutional, saying that the conditions prescribed for the issuance of a license to an insurance agent was a purely arbitrary restriction, with no good reason and no public interest conceivably to be subserved by the prohibition from conducting a business of insurance agent "with any other lawful business, or occupation in which they may be engaged." The case is so strongly in point and the analogy so close we feel warranted in quoting at length.

"As it was intimated below, following the suggestion in *People v. Ringe*, 197 N. Y. 143, 27 L. R. A. (N.S.) 528, 18 Ann. Cas. 474, the legislation now in question, must have been promoted in the interest of those engaged in the insurance brokerage business, alone, or in connection with a real estate brokerage business, rather than with any view of the public welfare. And see *People v. Gillson*, 109 N. Y. 389, at page 399, 17 N. E. 343, 4 Am. St. Rep. 465. Why should those who wish to engage in the business of soliciting and placing insurance not be permitted to conduct it as incidental to, or in connection with, any other innocent occupation, except that of real estate brokers? Where the Legislature may prohibit a business, or an occupation, it may prescribe conditions upon which it may be conducted; but, if the business, or occupation, be useful to the citizen, and it be lawful, the Constitution, both of the state and of the nation, guarantees to him the right to pursue it freely, and any arbitrary restriction upon its pursuit should be condemned as an invasion of guaranty. In varying language, but with the same thought, in very many cases, this Court has pointed out that the constitutionality of an act is to be tested by its effect upon the citizen's right freely to pursue lawful occupations; that a statute under the guise of an exercise of the police power cannot arbitrarily interfere with that liberty of pursuit; that the equal protection of the laws means equality of opportunity to all in like circumstances; and

that classification to be valid must not be arbitrary and discriminate against persons without a basis in reason. These principles have become familiar from frequent statement in the decisions and need no citation, nor discussion, of the cases here. They have become constituent elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the laws permit.

"The statute before us goes far beyond what is proper regulation and is prohibitory, in preventing a person from pursuing the occupation of an insurance broker, except as his principal business, or as an adjunct to a real estate business. To use the language in the case of *Wynehamer v. People*, 13 N. Y. at page 399, this statute 'passes the utmost limit of regulation, and does not even wear a disguise.' The restriction is not in the public interests; it is obviously in the interests of the class, either of insurance, or of real estate brokers. The insurance underwriters are not forbidden to transact their business through brokers; they are required to limit it to the class of brokers authorized by the statute. The plaintiff is a lawyer, and presumably the nature of that occupation should well qualify him to make insurance contracts, and there are many mercantile occupations, which certainly cannot be deemed to affect the person's fitness to solicit, or to place, insurance. But this statute would prevent them from adding to their earnings by pursuing that occupation. To concede the validity of this statute would be to concede a power to the Legislature in the guise of a regulation to destroy a lawful business. This plaintiff had built up a brokerage business, in connection with his other occupation—as many, presumably, others have done, holding, similarly, fire exchange brokers' certificates. But, under this statute, he is compelled to refrain from it, unless pursued under conditions which involve the sacrifice of that other occupation. Arbitrarily, the statute interferes with

a citizen's business pursuits and, by an unreasonable discrimination, deprives him of that equal opportunity, which the Constitution guarantees to him. What is there in the calling of an insurance agent, or broker, which demands any especial training or knowledge, not readily to be acquired by any business man? That he should be qualified by antecedents and in character for engaging in an occupation calling for some degree of trustworthiness may be true; as it is, also, true that the nature of this occupation, differing from other mercantile pursuits, calls for an acquaintance with certain rules by which it is governed. But trustworthiness is the common property of men, and success in placing insurance will depend upon the industry, honesty, and competency, which the broker displays."

Why does this Act proscribe undertakers and their employees and limit the plaintiff insurance company? The answer is plain and not to be disguised or dissembled. The legislation was designed to eliminate the competition of the plaintiff Life Insurance Company with the other life insurance companies doing business in this State, and writing the same class of insurance, who are using the mortality tables of 1868 as a basis for their premium rates, and who refuse to write above age 65, and who have failed to adopt the beneficial recommendations of the Guertin Survey; and to the end that they may maintain their antiquated actuarial methods, and escape being coerced by legitimate competition into adopting the recommendations of the Guertin Report, which are so vastly more favorable to the policyholders. The language of the New York Supreme Court in *People v. Gillson*, 17 N. E. 343 (345) says:

"Liberty in its broad sense as understood in this country means the right, not only of freedom of servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. These principles

are contained and stated in the above language in various cases (citing them). It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. *It is evidently of that kind which has been so frequent of late,—a kind which is meant to protect some class in the community against the fair, free, and full competition of some other class; the members of the former class thinking it impossible to hold their own against such competition, and therefore, flying to the legislature to secure some enactment which will operate favorably to them, or unfavorably to their competitors in the commercial, agricultural, or producing fields.*"

As said by the Supreme Court of the United States in *Smith v. Texas*, 233 U. S. 630; 34 S. Ct. 681; 58 L. Ed. 1129 Ann. Cas. 1915-D, 420 L. R. A., 1915-D, 677, the public interest is the basis upon which regulating or classifying legislation should be bottomed, and the tests, and prohibitions and restrictions should be enacted with reference to that object, so as not to unduly interfere with private business, and, further; "the liberty of contract is, of course, not unlimited, but there is no reason or authority for the proposition that conditions may be imposed by statute which will admit some who are competent, and exclude others who are equally competent to labor on terms mutually satisfactory to employer and employee."

The Statute assailed here "excludes others who are equally competent," and who have been adjudged to be equally competent and trustworthy by the State Agency clothed with the power and duty to so determine.

In *Northwestern National Insurance Company of Milwaukee v. Fishback; Insurance Commissioner of Washington*, 130 Wash. 490; 228 Pac. 516, 36 A. L. R., 1507, a Washington Statute which undertook to limit the number of agents an insurance company might appoint in any

particular locality on the basis of the population of the locality, was held unconstitutional. The Court said:

"At the outset, it is to be remembered that the occupation of insurance agent is a lawful business, and not one which it is within the power of the State to prohibit, and as is conceded by respondent's attorneys any individual has an inherent right to follow an ordinary lawful calling, and the deprivation of that right would be the taking of property without due process, and that the right to contract for one's services in a lawful calling is a right guaranteed by the Constitution."

After remarking that the insurance business is affected with a public interest and subject to regulation in the pubilc interest as are the professions or businesses of practicing medicine, dentistry, and law, and other activities, and that these various professions and commercial activities can be made subject to regulatory legislation in the public interest "*but, that such regulation must of course be reasonable,*" and that the right of an individual to engage in a lawful business cannot be prohibited unless that prohibition is based upon some condition which the Court finds to interfere with public morals, health, safety or welfare, the Court said further:

"The right to regulate the insurance business was sustained as to those matters which affect the general public, and the general public is not concerned with the number of agents which the insurance company may employ."

The Court said further that the Act "is in effect nothing more than the creation of a favored class who are permitted to engage in the lawful business of acting as insurance agents to the exclusion of everyone else from that business, and this excludes a great number of persons, who from time immemorial have acted as insurance agents. We all know that real estate agents, lawyers, and persons following many other lines of business, have been accustomed to write insurance as a 'sideline.' We cannot but feel that

the legislature had in view no welfare of the public, but that this legislation is an attempt to monopolize the business of writing insurance. Authorities might be multiplied until the perusal of them would become exhausting, to the effect that in any of these matters where the Legislature is interfering with lawful business that the interference must have some fundamentally sound reason back of it. No such has been suggested in support of this legislation. The Act itself, unlike most Acts in later years attempting to prescribe restrictions on human endeavor, contains no statement of its high and lofty purpose, and it is left to conjecture and the limited field of judicial knowledge to create some theory upon which can be predicated the reasonableness of this Statute. It is, as we have already said, not a statute which has anything to do with the regulation of the insurance business so that the insured may not be imposed upon, and shall at all times receive fair and equitable treatment; it is merely an interference with what has always been one of the ordinary businesses engaged in by whoever saw fit to do so; it prescribes no mental or moral qualification, establishes no standard of conduct or experience, leaves the selection of agents entirely within the discretion of the Insurance Company, and does nothing in the way of promoting public welfare, but does afford a splendid opportunity for the private gain of a few."

II.

The Act is invalid because the overwhelming proof shows that the Family Security Life Insurance Co. and its plan are affording to the low-income and working classes social and economic benefits not available from any other company,—lower premiums, based on the 1941 Standard Industrial Mortality Table, as opposed to the American Experience Mortality Table, unrevised since 1870 and used by its competitors, better surrender and extended insurance value, higher reserves and guaranteed interest

rate, all approved by the South Carolina Insurance Commissioner in February, 1948.

In *Louis K. Liggett & Company v. Baldridge*, 278 U. S. 105; 49 S. Ct. 57; 73 L. Ed. 204, a Pennsylvania Statute requiring every pharmacy or drug store to be owned by a licensed pharmacist, and forbidding any corporation, association, or partnership to own a pharmacy or drug store unless all the partners or members were licensed pharmacists, with certain exceptions as to existing corporations owning pharmacies, was under attack as unconstitutional. The Supreme Court of the United States said (Page 111 of 278 U. S., and Page 59 of 49 S. Ct.):

"The Act is sought to be sustained specifically upon the ground that it is reasonably calculated to promote the public health; and the determination we are called upon to make is whether the Act has a real and substantial relation to that end, or is a clear and arbitrary invasion of appellant's property rights guaranteed by the Constitution (citing cases). The police power may be exerted in the form of State legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment, only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare. Here the question is: What is the effect of mere ownership of a drug store in respect of the public health?"

After reciting the regulatory legislation of Pennsylvania protecting the public health in relation to the compounding and sale of prescriptions and medicines, the Court pointed out: "Thus, it would seem every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding, or selling drugs and medicines is amply safeguarded. The Act under review . . . deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right, and on its face denies what the Constitution guarantees. A State cannot, under

the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions upon them (citing cases)."

As this Court said in *Adams v. Tanner*, 244 U. S. 590; 61 L. Ed. 1336; 37 S. Ct. 662:

"Because abuses may and probably do grow up in connection with this business (employment agencies) is adequate reason for hedging it about by proper regulation. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, probably no business, which does not offer peculiar opportunity for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guarantees of the Constitution cannot be freely submerged if and whenever some obstensible justification is advanced and the police power invoked."

And, further, on page 596 of the U. S. Report:

"It is also true that the police power of the state is not unlimited and is subject to judicial review, and when exerted in an arbitrary or oppressive manner, such laws may be annulled as violative of rights protected by the Constitution."

This Act undertakes to restrict lawful occupations and lawful business. The restriction must be supported by some manifest or reasonably discernible evil to be corrected or benefit to be achieved.

Legislative bodies frequently preface such Acts with a more or less sincere recital of facts imagined or claimed to exist which will justify what they intend to do. This

Act has no preamble, and the hearings before the Committees of the Legislature suggest no evil to be corrected and no benefit to be promoted by the legislation. We are not questioning the principle that this Court will not look to legislative motives to determine the validity of an Act.

But we do assert that no preamble advises the Court of any claimed or imagined facts from which evil may be inferred, and no evil to be corrected can be deduced from the terms of the Act; and nobody advocating its adoption could point out an evil to be curbed or a benefit to be promoted,—only a benefit that competing insurance companies didn't wish to be compelled to join with the Family Security in furnishing to the working classes.

In *U. S. v. Carolene Products Co.*, 304 U. S. 144; 82 L. Ed. 1234, it is shown that regulatory legislation affecting lawful business or lawful occupation, where the evil to be corrected or the benefit to be achieved lies without the realm of judicial notice and, where the facts made known or generally assumed show the regulation is not rested upon some rational basis, it must be stricken.

III.

The South Carolina Insurance Code of 1942 provides plenary regulation of the insurance companies, insurance business and insurance agents, and confers plenary power and imposes the mandatory duty upon the Insurance Commissioner, his deputies and examiners, to correct and prevent *all* abuses, unfair methods and unfair or deceptive practices. It forbids payment or settlement of insurance policies in goods or services. (Section 65, 45 Stat. 350.) The Act assailed accomplishes no further regulation and no prevention of any suggested or imagined evil, abuse or unfair method or practice. It destroys the Family Security Life Insurance Co. and disables undertakers to be officers of insurance companies and disables them, their agents and employees to be life insurance agents, though

adjudged by proper authority to be "competent and trustworthy."

That law is all that is needed to keep insurance and insurance companies and insurance agents hedged about against abuses or bad practices. Law may condemn, but law alone cannot prevent crime. Fraud, deceit, unfairness are all generic terms defying any limiting definition, because their potentialities can be measured only by the inventiveness and ingenuity of those inclined to swindle and cheat. It cannot save a deliberately discriminating and destroying legislative classification to sandwich between its destructive provisions some lofty denunciation of something not aimed at and not pretended to exist. And something that already as fully guarded against by existing law.

IV.

Discussion of the theory of appellants and the dissenting opinion below.

With great respect and some diffidence, but earnestly, we find some fault with the theory of Appellants, and the dissenting opinion below, and we call attention to some significant omissions of the Appellants to give the Court the benefit of the evidence and opinions of the most qualified and experienced to express an opinion or to give evidence that the Act is needed, or accomplishes any desirable result.

The hearing was in Columbia, the Capital city of South Carolina, and the official residence of the Insurance Commissioner and his Actuaries and deputies. Can there be impropriety in wondering and asking why Appellants didn't call the Insurance Commissioner and his experts to point out to the Court wherein there was need for this Act and wherein it could benefit or protect the public interest? May we not assume from this omission, and properly assert here, that the presumption arises from the unexplained failure to call an available witness who ought

to know, that his testimony would have been unfavorable? *Robinson v. Duke Power Co.*, (1948) 213 S. C., 185, 48 S. E. (2nd) 808.

Our policies provide for payment in money only, just like the policies of our competitors, and with a facility of payment clause, just like the facility of payment clause of our competitors.

How can it be argued from this that policies written by Family Security Life Insurance Co. and its method of writing will tempt an undertaker to persuade the consumption of the proceeds in burial expenses? The Court judicially knows that where there is doubt of the ability to pay funeral expenses, the undertaker will find out how much insurance there is and with whom it is carried. And that they keep pads of assignment forms for use in having policies assigned to them. The temptation would be the same if the insurance is written through a competing company.

Opposed to the imagined evil result mentioned in the dissenting opinion, we suggest that the same cupidity which puts the undertaker under the strain of the temptation to persuade overspending would as readily impel him to do what he could to prevent lapses. And, under the Family Security plan, the undertaker would know who was carrying insurance and could help them to avoid lapses and "*prevent the apparently enormous profits accruing to insurance companies from the so-called 'gain from mortality,'*" deplored in the Guertin Report.

Moreover, these "*apparently enormous profits from so-called 'gain from mortality'*" will not be reflected in the earnings of the Family Security Life Insurance Co. because it has adopted the 1941 Standard Industrial Mortality Table, which reflects the gain in mortality from improved living conditions, advances in medical science, magic drugs and miracle rehabilitations. And it writes through age 74. Its competitors seek to retain "the enormous profits from

gain in mortality" and the American Experience Mortality Table, unrevised since 1870.

Since undertakers and their agents and employees have been adjudged by the proper South Carolina authorities "competent and trustworthy," and since the Court will take judicial notice that there are no patent factors which necessarily condemn them to excess cupidity, as contrasted with other folks, may we not assume that, when writing a policy intended to cover burial expenses, the undertaker agent can helpfully advise the insured, who will determine the amount he wants expended on his funeral without the immediate prospect of death, and calmly, without any more emotional stress than he would experience if taking the insurance from the debit walker of a competing company? He fixes the amount, and he takes the insurance to protect his family against the sudden demands for burial expenditures "when every penny has to be counted . . . when there is a still unsettled balance at the grocers for food during the last shutdown, with rumors of dull times and another shutdown." If there is temptation, it is not diminished by the Act assailed.

The Court will take judicial notice that all insurance companies employ a policy jacket containing advertising matter and designed to provoke favorable public attention, such as "A Mutual Company owned by its policyholders," and "A Home-owned Company," and many others. The Insurance Commissioner has found no fault, and it is necessary to designate the place where premiums are to be paid. If this designation is an evil, the Act assailed does not interfere with it. Because, competing insurance companies may (and probably will) seek the advertising advantage accruing to opening an agency office in a mortuary or undertaking establishment and having its premiums paid there, and so advertising on the back.

Our Company has no copyright on its plan. It establishes no exclusive agency in any community, but wel-

comes all undertakers as agents and stockholders. However, any other mortuary or undertaking establishment may organize its own company and have its own agents, and afford the public the benefit of further competion.

Our policies are payable in cash, and the family of the insured has free choice in selecting an undertaker.

The dissenting opinion, after saying that the plan means confining undertaking to agents of the Family Security Life Insurance Co., later says: "*If these plaintiffs are successful and if the company writes many policies, as it seems to have done, other companies will undoubtedly be attracted to the field.*"

The statement seems contradictory, but if the latter be true (and we think it is), will not the public be further benefited by legitimate competition?

The criticism of the 15% commissions, contained in the dissenting opinion, is evidently based upon a misapprehension of what the 15% is. It is a *collection* commission, not the agent's commission for writing the insurance. It defrays the office expenses of the undertaker-agent in connection with the life insurance written.

The dissenting opinion and the theory of appellants' argument reached their conclusion of validity by invoking two inadmissible and illegal presumptions,—(1) that the Family Security Life Insurance Co. and its officers and agents intend to violate the criminal law, and (2) that the Insurance Commissioner and his deputies and examiners will not perform their official duties under the insurance law.

"There is a presumption in favor of legality and compliance with the law and against illegality; conversely, there is no presumption in favor of illegality, or violation of statute." 31 C. J. S. Title "Evidence," Sect. 134, page 769.

"The presumption is in favor of an intent to obey the law, and against any intent to violate it, and there is no

presumption of intent to violate the law." *Ibid.* See also 20 Am. Jur. Title "Evidence," Sect. 226, page 221.

The law presumes in favor of good faith, honesty and fair dealing, and that people intend to do right rather than wrong." *Ibid*, Section 229.

"The presumptions that public officers discharge the duties of the office and that in the discharge of such duties observe all the necessary and proper formalities imposed by law are applicable to all federal, state, county and municipal officers of high or low rank." Am. Jur. Vol. 20, Title "Evidence," Sections 170, 173.

CONCLUSION

The plan of the Family Security Life Insurance Co. is a natural and logical evolution, in step with such organizations as the Blue Cross or Group Health Insurance, so bitterly opposed by the American Medical Association (*Am. Med. Asso. v. U. S.*, 317 U. S. 519; 87 L. Ed. 434). Mr. Orgain's statements before the Senate Banking and Insurance Committee that the insurance agents had organized to be as nearly like the American Medical Association as they could get seems borne out by their similar assault on the Family Security Life Insurance Co. and the way it supplies a deep felt and widespread need of the low-income and wage-earning classes. It is in step with the program for social and economic improvement, as it has been developing and is being promoted through National legislation and imitative State Acts.

That it is in tune with this social advance is demonstrated by its phenominal growth between late February, 1948, when it had $500,00 of insurance in force, to May 8, 1948, when it had 2,824 policies representing $838,375,00 in insurance. And this during a time when the agents of other insurance companies were giving it a "bad mouth" and advocating the proscriptive Act here assailed; in the face of the adoption of the Act and in the face of this litigation.

The experimental period disclosing this economic and social progress is less than two months. We wish we might tell the Court the experience history of this company up to this date.

The people, by their action, have declared the public interest and that the assailed Act seeks to defeat it.

This company meets, honestly, economically and safely, under the strict surveillance and supervision of the Insurance Department of South Carolina, the deep craving of people financially insecure to be assured that they will be decently buried when they die. It has none of the weakness and lends itself to none of the abuses of burial societies, but, as Mr. Orgain, the mouthpiece of its organized competitors confesses before the Senate Committee: *I will tell you again as I have told them over there, and as I have admitted before every group that I have spoken to, that they have a life insurance company that is organized under the state law and has met every law that is on the books and that they are running on the Commissioner's standard of arriving at rates.*" (R. 128, 129.)

It stands admitted that its policies comply with every law; that they are enforcable contracts; that they are payable in cash; and that they are more favorable to the insured than any other industrial life policy available from competitors of the Family Security Life Insurance Co., and that it meets a public need wide-spread among the working people.

Shall an invalid Act be permitted to snatch this benefit from them?

Respectfully submitted,

C. Erskine Daniel,
Donald Russell,
Edwin W. Johnson,
T. Sam Means, Jr.,
All of Spartanburg, South Carolina
Attorneys for Appellees

APPELLEE'S APPENDIX

The Insurance Code of 1947 (45 Stat. 322-473) "An ACT To Provide An Insurance Code For The State of South Carolina; To Provide For The Appointment and Election of An Insurance Commissioner and a Deputy Insurance Commissioner; To Provide For Their Terms of Office and Powers; To Terminate The Term of Office of The Present Insurance Commissioner; To Regulate Insurance Companies; To Provide For The Organization of Insurance Companies; To Provide For The Admission of Foreign Insurance Companies; To Provide For The Licensing of Insurance Agents, Insurance Brokers and Insurance Adjusters; To Provide For The Regulation of Insurance Rates and To Prohibit Unfair Methods of Competition and Unfair Practices In The Business of Insurance and To Further Regulate Insurance Companies, Their Agents, Brokers and Adjusters and to Further Provide For The Regulation of The Insurance Business; To Provide Penalties For The Violations of The Provisions Thereof, and To Repeal Articles 1, 2, 3, 4, 5, and 5-a and Every Section Contained Therein of Chapter 157 of Volume 4 of The Code of Laws of South Carolina, 1942, As Amended."

Sec. 13 (45 Stat. 327) "COMMISSIONER APPROVE ISSUANCE OF CHARTERS TO INSURANCE COMPANIES—APPROVE FOREIGN INSURANCE COMPANIES DOING BUSINESS IN STATE.—It shall be unlawful for the Secretary of State to issue any charter to any insurance company of whatever kind or permit any foreign insurance company to do business within this State, without the written approval of the Commissioner" . . . .

Sec. 65 (45 Stat. 350) "NOT TO PAY DEATH BENEFITS IN SERVICE—NOT ISSUE POLICY PROVIDING FOR SETTLEMENT OF BENEFITS IN MERCHANDISE OR SERVICES—PENALTY.—It shall be unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rend-

ered. Any insurance company violating the provisions of this section shall be liable to a penalty of ten (10) times the amount of such policy, certificate or other evidence of insurance to be collected in a suit by the heirs-at-law of such deceased policyholder. Any officers, agents or servants of any insurance company violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand ($1,000.00) dollars, or suffer imprisonment on the county chaingang or in the state penitentiary for a period of not more than one (1) year in the discretion of the court."

Sec. 69 (45 Stat. 351) "REVOCATION OF LICENSE; PUBLICATION OF NOTICE; INJUNCTION AND RECEIVER.—If the Commissioner is of the opinion upon examination or other evidence that a company is in an unsound condition, that it has failed to comply with the law or with the provisions of its charter, or that its condition is such as to render its proceedings hazardous to the public or to its policyholders, or that the true value of its assets, if it is a life insurance company, are less than its liabilities, exclusive of its capital or if its officers or agents refuse to submit to examination or to perform any legal obligations relative thereto, he shall revoke, or suspend all certificates of authority granted to said company, its officers or agents, and shall cause notices thereof to be published in a newspaper of general circulation in this State, and no new business shall thereafter be done by it or its agents in this State while such default or disability continues, nor until its authority to do business is restored by the Commissioner. . . .

Sec. 101 (45 Stat. 362) "FORMS TO BE APPROVED BY COMMISSIONER.—It is unlawful for any insurance company doing business in this State, to issue or sell in this State any policy, contract or certificate until the forms of the same have been filed with and approved by the Commis-

sioner. PROVIDED, this Section shall not apply to surety contracts or fidelity bonds nor to insurance contracts, riders or endorsements prepared to meet special, unusual, peculiar or extraordinary conditions applying to an individual risk."

SEC. 107 (45 Stat. 364) "AGENTS LICENSE—APPLICANTS FOR EXAMINATION—AGENT'S QUALIFICATION—FEES—REVOCATION OR SUSPENSION—PREMIUM VOLUME.—Before doing business in this State for any Insurance Company, Association, or Society, each applicant for an agent's license shall stand an examination, as prescribed by the Commissioner on blanks furnished by the Commissioner, which blanks shall require the following information: Full name, age, residence, qualifications for such license, knowledge of the insurance laws of this State, what experience in insurance applicant has had, whether he ever had a license suspended or revoked or refused by any State, whether he has ever been in default in any indebtedness to any insurance company or ever had an agent's contract canceled, and if so, the reason for the cancellation, and submitting a complete history of his employment for three years prior to the date of the application, all of said information to be given under oath . . . .

Before issuing such license, the Commissioner shall determine, from the examination, that the applicant for an agent's license is a competent and trustworthy person to engage in the classification of insurance business he intends to engage in. The Commissioner shall have power to revoke said license after ten (10) days notice or refuse to reissue said license when it shall appear that an agent has violated the laws of this State or has willfully deceived or dealt unjustly with the citizens of this State. When upon investigation, it is found by the Commissioner that an agent has obtained a license by fraud or misrepresentation, he shall have power immediately to suspend said license . . .

That all applicants for an insurance agent's license shall be vouched for by an official or a licensed representative of the Company for which he proposes to act, who shall certify whether the applicant has been appointed an agent to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its agent and intends to hold himself out in good faith as an insurance agent." . . .

Art. 12 (45 Stat. 463-473) "Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance.

Sec. 1: DECLARATION OF PURPOSE.—The purpose of this Article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined."

Sec. 3: "UNFAIR METHODS OF COMPETITION OF UNFAIR AND DECEPTIVE ACTS OR PRACTICES PROHIBITED.—No person shall engage in this State in any trade practice which is defined in this Article as, or determined pursuant to this Article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

Sec. 4: "UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED.—The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentation and false advertising of policy

contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholders insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) DEFAMATION.— Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement of any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an

insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Boycott, Coercion and Intimidation.— Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) False financial statements.— Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(6) Stock operations and advisory board contracts.— Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or securities or any special or advisory board contracts or other contracts of any kind promising return and profits as an inducement to insurance.

(7) Unfair discrimination.— (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in

the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(8) REBATES.—(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than is plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices: (1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, providing that any such bonuses or abatement of

premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders. (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year."

Sec. 5: "Power of Commissioner.—The Commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this State in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Article."

Sec. 6: "Hearings, Witnesses, Appearances, Production of Books and Service of Process.—

(a) Whenever the Commissioner shall have reason to believe that any such person has been engaged or is engaging in this State in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty (30) days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Commis-

sioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Article shall require the observance at any such hearing of formal rules of pleadings or evidence.

(d) The Commissioner, upon such hearing, may administer oaths, examine and crossexamine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The Commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the Commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the Circuit Court of Richland County or the County where such party resides, on application of the Commissioner, may issue an order requiring such person to comply with such subpoena and to testify and any failure to obey any such order of the Court may be punished by the Court as a contempt thereof.

(e) Statements of charges, notices, orders, and other processes of the Commissioner under this Article may be served by anyone duly authorized either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process

at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same."

Sec. 7: "CEASE AND DESIST ORDERS AND MODIFICATIONS THEREOF.—

(a) If, after such hearing, the Commissioner shall determine that the Method of competition or the act or practice in question is covered by Section 4 of this Article and that the person complained of has engaged in such method of competition, act or practice in violation of this Article, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice . . . .

Sec. 9: "PROCEDURE AS TO UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES WHICH ARE NOT DEFINED . . . .